The Ruthven of Freeland Peerage

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The Ruthven of Freeland Peerage and its Critics

By

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Contents

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OF the nature of the peerage of Ruthven of Freeland we may in time learn more than we yet know; but hitherto the operations of the peerage lawyer, and of the preacher of the cult of the 'new genealogy,' though they have not been sparing, have merely 'darkened the clear without clearing 'the dark.'[1]

The History of the Peerage.

Before turning, however, to the achievements of those critics, I propose to set forth in outline the history of the assumption of the peerage first by the male line, and thereafter by the female line or a line of heirs of an entail, which ever it may turn out to have been; and, to avoid confusion, to preface that outline with a note on the main line of the family of the name, and the older title of Ruthven which it enjoyed.

On 29th January, 1487-88, Sir William Ruthven of Ruthven, representative of an ancient house whose armorial bearings seem to deduce it from the Celtic Earls of Athol, was created by James III. a Lord of Parliament with the title of Lord Ruthven.[2] The creation escaped, by the space of three days, the sweep of the Act Rescissory of James IV.; and,

[1] Phrase of George Chalmers's, adopted by John Riddell, etc., as applicable to the operations of Crawfurd, Douglas, etc., the older genealogists.

[2] *Act. Parl. Scot.*, ii. 181.

the grantee's son, the master of Ruthven, having fallen at Flodden in his father's lifetime, the grantee was succeeded by William his grandson.

William, second Lord Ruthven, married the daughter and heiress of Lord Halyburton of Dirletoun, who became, in her own right, the Lady Halyburton. They had two sons, Patrick and Alexander.

Patrick inherited the dignities of Ruthven and Halyburton; and his descendants afterwards enjoyed them, with the higher honour of Earl of Gowrie, till their forfeiture in 1581 for the hand they had had in the 'Raid of Ruthven'; and again, during a brief period of restoration, till their final attainder and worse, on account of the 'Gowrie Conspiracy' of 1600.

In the meantime, Alexander Ruthven, the second son of the second Lord Ruthven, was succeeded by his son William Ruthven of Freeland; and William of Freeland, in his turn, was succeeded by his son Sir Thomas, an eminent personage, in whom we meet the grantee of the peerage of Ruthven of Freeland.

Sir Thomas sat in the Scots Parliament at Perth on 30th March, 1651, as the Laird of Freeland, and was then one of the Commissioners representing the lesser barons. In the Parliament held at Stirling on 24th May of the same year, he appears with the title of Lord Ruthven, on a Parliamentary Committee, as a representative of the Lords. From this we may gather that he had been created a Lord of Parliament between these dates, and the place given to the peerage in the Roll of the Scots Parliament of 1706, the official roll of the peers in 1707, and that of 1740 agrees thereto. They place it after the peerages of Colville and Rollo, created on 4th and 10th January, 1651, and before that of Rutherford, created after the Interregnum, in 1661.

So much and no more is ascertained of the date of the peerage. The patent is not known to exist. Like the grants of some other peerages, it does not appear in any register; and no contemporary or official account of its contents has been found.

Thomas, Lord Ruthven, who died in 1671,[1] had three daughters: (1) Anna, (2) Elizabeth, (3) Jean, and one son, David, by which last he was succeeded.

At this point it seems desirable to present a pedigree in tree form of Sir Thomas and his issue down to James his great-grandson. I prefix figures to the names of the persons on the tree in the order of their succession to the Ruthven estates.

(1) Sir Thomas, first Lord Ruthven.

Anna, *1st daughter* (died 1689, before David).	Elizabeth, *2nd daughter* (died before David).	(3) Jean, *3rd daughter* (died unm. April, 1722).	(2) David, *only son*, second Lord Ruthven (died unm. 1701).
(4) Sir William Cunynghame, Bart. (died without issue, Oct., 1722).	(5) Isobel (died, 1732).		
	(6) James.		

David, Lord Ruthven (2), succeeded his father in 1671, and was retoured heir to him both in general and special on 16th May, 1673. David is found on the rolls of the sittings of the Parliaments, and on Parliamentary Committees of his time, was a Lord of the Privy Council and of the Treasury; and died in April, 1701,[2] unmarried, leaving a deed of entail dated 26th October, 1674, nominating his heirs in his estates, as, according to his narrative in the deed, he had full privilege and power by his infeftments to do at any time during his lifetime.

[1] Crawfurd, *Peerage*, wrongly says 1674.

[2] Crawfurd, *Peerage*, wrongly says 1704.

We now enter on a period specially dealt with by the critics.

The Hon. Jean Ruthven (3), or, in the phraseology of the time 'Mistress Jean Ruthven,' succeeded her brother in 1701 under the entail; and in various deeds we find her styling herself, and styled 'Jean, Lady Ruthven.' She too, in April, 1722, died unmarried.

Sir William Cunynghame of Cunynghamehead, baronet (4), only son and heir of his mother, Dame Anna Ruthven, succeeded his aunt Jean Ruthven in April, 1722, under the entail of his uncle David and assumed the surname of Ruthven. Whether he succeeded to the peerage as well is not known. He certainly did not assume the title. He died in the ensuing October, uninfeft and unserved. To Sir William, who died without issue, succeeded, in the entail at least, his niece Isobel.

Isobel, Lady Ruthven[1] (5), daughter of Elizabeth, and her husband, Sir Francis Ruthven, took up her inheritance under the entail, and assumed the title of honour, as is evident from a number of records. She is reported by Douglas (*Peerage*), and accepted by the critics, as having been summoned to the Coronation of 1727.[2] She married James Johnston (afterwards known as James Ruthven) of Graitney, Colonel of the Third Regiment of Footguards, and had a son James.

James, Lord Ruthven (6), in his turn—in 1732, assumed the title and exercised such of its duties and privileges as fell to his lot. As he survived till 1783, the general enquiry and report on the Peerage by the Lords of Session of 1740, and the subsequent measures of the House of Lords for the purging of the voting list of the Scottish peerage, took place in his

[1] I attribute the title here and hereafter, in this article, without prejudice to the discussion.

[2] It has, indeed, been said, apparently in error, that she was summoned to the Coronation of 1714, also.

time. In all these proceedings the title of Ruthven was left unquestioned; Lord Ruthven continued to vote; and he and his lady were summoned with the rest of the Peerage to the Coronation of 1761. He left a son James, who succeeded him and was the ancestor of the present Lord Ruthven.

Such is the catalogue of the holders of the peerage of Ruthven of Freeland so far as is necessary to the present discussion.

It is thus seen that, in 1701, fifty years after the peerage was created, the grantee's son and successor, the second peer, died unmarried, and one of his sisters, a daughter of the grantee, assumed the title; and that since then the title has been borne by a female line, and its tenure has been uniformly admitted by the authorities.

But though the official history of the peerage of Ruthven has been thus smooth, the treatment which that peerage has received in the republic of letters has not been so fortunate; for there it has met with the critics to whom, in my opening sentence, I have alluded. To recount therefore the points of the attack delivered by these gentlemen, if I am able to do so within reasonable limits; and to examine the force of it, specially as it leaves the hands of the last and most untiring assailant of the peerage in question, is the purpose of the following pages.

The Denunciation and its Lofty Purpose.

In 1833, about a hundred and thirty years after the female line began, John Riddell published his *Remarks upon Scotch Peerage Law*, in which work he devoted ten octavo pages, pp. 133-143, to assist the public to a 'proper estimate of the 'claim to the Scotch barony of Ruthven of Freeland.' He prefaced his observations by a footnote to say that he was 'only discharging a duty of correcting flagrant error, and

'no where,' he adds, as if in an involuntary parenthesis, 'does 'it abound so plenteously as in the works of our Peerage 'writers—who, to use the words of Chalmers, in "the form" 'of "fiction," are "continually darkening the clear without '"clearing the dark" (*Caledonia*, v. i. 556) . . . there is, 'unfortunately, no other remedy for the evil than that impartial, 'and unflinching spirit of severe investigation that was first 'adopted by Lord Hailes, without reference to weaker biasses, 'or prejudices, either public or private.' Riddell in short here intimated, so far as we can construe him, that he was about to do something that would be very disagreeable to someone, but that he was nerved to the operation by the spirit of impartiality, and the severity of the duty that was upon him to speak out the truth.

Impartiality and severity, however, when applied to facts and arguments imply that the facts shall be ascertained to be facts, and that the conclusions of the argument shall stop where the proofs stop; and, for the rest, that all theories and speculations shall be labelled as such. It was the remaining paragraph of Riddell's footnote, therefore, which probably contributed more than anything to the inattention with which his remarks on the Ruthven Peerage were received by students; for it contains the addition that, in the present case, he comes to conclusions which do not follow inevitably from the facts; and that fuller information may overturn them. His words are:

'All that remains to be added is that if there be any mis-'conception, or inaccuracy in the above statement, or additional 'fact of a favourable nature that has escaped him, the author 'will be at all times most happy, while he frankly acknowledges 'his error, to make the necessary alteration, and to retract his 'inferences so far as they may thereby be affected.' Thus

Riddell admits that the disagreeable things he was about to say were made on a mere hypothesis, and might have to be apologised for!

In the article itself, however, Riddell does not preserve the form of a hypothetical statement. Against the theory that the peerage exists, he sets forth such facts as he has, and then pronounces them to be 'unequivocally decisive.' When he finds that the servants of the Crown recognised the peerage as subsisting, he declares that they 'did palpably err,' and so on. And, so clear and undoubted, according to his language, is the proof, that, in the end, having affected to show, with the aid of Douglas's *Peerage*, that two ladies of the family, an aunt and a niece, pretended to hold the title at the same time, the niece being rather the earlier aspirant, he discards the whole discussion with impatience—'the present topic, after 'all, is too trivial and flimsy for criticism'!

The principal feature of the article, however, is the discrepancy between the strength of Riddell's language, and the weakness of his arguments. Old peerage writers, anonymous compilers of lists, and unpublished hearsay of gossip, are his authorities, and it is difficult to imagine why the article was ever taken in hand.

Riddell lived for nine and twenty years after this explosive discharge of duty, and published several works on cognate subjects, notably his *Inquiry into the Law and Practice in Scottish Peerages*, 2 vols., 1842. These works include discussions, on, I think, every matter connected with the Scottish peerage save the succession to the peerage of Ruthven. I cannot find that he ever again alluded to it, or that his *Remarks* on it in 1833 ever received any attention until after another fifty years they were adopted more or less intact, but without the footnote admission of possible error, by a little band of English genealogists

which had already gotten itself rather out of its depth in the attempt to deal with the peerage and pedigree of the Ruthvens, being without special qualification for either subject.[1]

In 1880 Mr. Joseph Foster had published his first edition of *A Peerage and Baronetage*, in which he deduced the peerage of Ruthven of Freeland from the creation by Charles II., 'between '28th March, 1651, and 1st January, 1661: the patent was 'burnt with the house of Freeland, 14th March, 1750, and 'the limitations are not on record; but as the title was kept 'on the Union Roll, it is presumed that the honours were 'to heirs general of the patentee's body.' In this, and in an erroneous statement that David Lord Ruthven was immediately succeeded by his niece Isobel, who also was summoned to the coronation of George I. (1714) as well as that of George II. (1727), he followed Douglas's *Peerage*, a book which, however, he had not read very carefully, for he omitted to repeat Douglas's statement of the fact that David left a third and youngest sister, Jean. These statements were repeated in his two next issues.

In 1883 Mr. Foster published his fourth edition, and, in the preface, announced that there was a special need of revision of the ordinary accounts of the lineages and creations of the Scottish peerages, *Ruthven* being among the accounts which he professed to have already revised. 'A barony created by Charles II.,' he wrote, 'has been either wilfully grafted on to or carelessly con-'fused with a coronation (or courtesy) barony of George I. and 'George II. I have in this edition pointed out how erroneous 'is the account in Wood's *Douglas*, and have separated the original 'and genuine dignity from the later and questionable title. It is to 'be hoped that this may invite attention to the unsatisfactory

[1] See Foster's *Peerage*, Ed. 1883, *s.v. Ruthven*; also Controversy on Ruthven Peerage in *N. and Q.* of 1883.

'*status* of the barony. . . . In this, as indeed in most of my 'work, I have to acknowledge the assistance of Mr. J. H. Round, 'whose knowledge of history has given a special value to his 'genealogical studies.'

Mr. Foster's article on Ruthven to which this alludes begins (p. 610) by naming the present holder of the title and describing him as a baron created in 1714. The date is apparently meant to allude to the Summons of his predecessor in the title to the Coronation of George I. in that year, for Mr. Foster proceeds to term him '6th holder of the Coronation barony.' The limitations of the 'barony created by Charles II.,' says the article, 'are 'not on record, but as the title was kept on the Union Roll, 'it has been presumed that the honours were to the heirs general 'of the patentee's body. Such is the assumption in Douglas' '*Peerage*, but the fact that Sir William Cunningham, who died in '1722, did not take the honours is entirely destructive of this 'unwarrantable assumption.' After this last strange statement, the article proceeds to the pedigree and follows *Douglas* generally, but on its own responsibility adds that it was on David's death in 1701 that Sir William assumed the surname of Ruthven, and that it was during Sir William's life that his cousin 'Elizabeth' (*sic*, Isobel (?)) had a summons as a Baroness to the Coronation of George I. Isobel he describes as 'Baroness Ruthven by virtue 'of Summons as a Baroness to the Coronation of George I., 1714, 'and George II., 1727,' and James, her son, succeeded his mother in her title, 'though it was merely one of courtesy, 'ceasing at her death, being held by virtue of the coronation 'summons, and not derived from the creation of Charles II. . . . 'We submit that it ought to have no place in a peerage.' All recognition of the existence of Jean, who was David's youngest sister, was still absent, even though she had been enumerated by Crawfurd, Douglas, and Wood.

It is not surprising that such an article excited comment; and in the course of a rather acrimonious correspondence in *Notes and Queries* in the same year, Mr. Round was informed by an anonymous correspondent of the existence of Riddell's *Remarks*.

It thus came about that what Riddell seems to have avoided repeating was repeated and enforced with much amplification, and many additional statements,[1] in 1884, by Mr. J. H. Round, in Mr. Foster's *Collectanea Genealogica*, to the extent of twenty quarto pages,—pp. 167-186. 'I propose,' he began, 'to 'call attention to a public scandal of very grave import, and of, 'I believe, unparalleled character. Its subject is the assumption 'of a peerage dignity by a line of commoners in no way entitled 'to it, and the gradual recognition of that wrongful assumption 'in the accidental absence of any counter claimant, culminating 'in the acceptance of this line of commoners as undoubted Peers 'of Scotland.'

It is, I hope, unnecessary to quote more of this paragraph, except the following:

'It [the assumption of the peerage by the line of commoners] 'not only originated in a joke, and was ignored as beneath 'serious notice, but was, even when it had begun to secure 'recognition, mercilessly shattered and laughed to scorn by the 'greatest authorities of the age. That, this being so, no steps 'should have been taken to put a stop to so flagrant a scandal, 'was surely strange, and discreditable enough.'

Mr. Round's peroration included the words: 'I have 'brought no new charge, I have advanced no fresh thesis. I 'have but vindicated the views on this question that were 'publicly enunciated by Riddell more than half a century 'ago. . . . The practical question is here raised whether in

[1] But without Riddell's provident footnote.

'the words of the Lords' Committee of 1847 "the public" is 'not in danger of being "subjected to frauds," and whether 'such steps should not at length be taken, as unquestionably 'they *can* be taken even now, as will render such "frauds" 'impossible in all future time.'

Mr. Round reiterated his assertions, not *in extenso*, but by summary in a manner, and by reference to the *Collectanea*, in an article on The Peerage in the *Quarterly Review* of 1893, pp. 407-410; and, not satisfied with that re-vindication of his views, he returned to the charge in 1901, this time in a collection of his own writings entitled *Studies in Peerage and Family History*. This is a book with a mission. Its preface sets out with the proclamation: 'The studies contained in this volume are intended 'to illustrate that new genealogy which is of comparatively recent 'growth, and to stimulate the movement for honesty and 'truth in peerage and family history.' After a series of severities on certain sorts of genealogists and heralds, who undoubtedly illustrate in some ways how their functions ought not to be employed, Mr. Round proceeds to his own illustrations, which are to stimulate to better things. On pp. 95-101 he reproduces substantially the précis of his attack on the title of Ruthven contained in his article of 1893, referring all who are 'desirous of really learning the truth, to the elaborate article 'I wrote on the subject in part xiii. (pp. 167-186) of Mr. 'Foster's *Collectanea Genealogica* (1884).' That article, therefore, must be taken as Mr. Round's final and concluded case against the existence of the Ruthven of Freeland peerage; and that it merits examination Mr. Round himself presents some evidence. *Burke*, who previously had accepted the theory that the peerage must be extant, had been compelled to 'change his ground' by Mr. Foster's observations; and, in respect of Mr. Round's, *Debrett* has called in question the arguments for the defence, and 'G. E. C.'

has accepted the attack as conclusive; in fact, '*The Complete Peerage* refers throughout (vi. 457-462) to this article as 'dealing "exhaustively" with the case, and as "amplifying Riddell's '"crushing demolition of the 'apologies' for such assumption." 'Its editor asserts that "on the death of the second Lord the '"title was arbitrarily assumed," and he refuses to accept any of 'those who have assumed it since 1701 as entitled to do so' (*Studies*, pp. 97-99).

The time therefore seems to have come for an examination of the grounds of Mr. Round's indictment. To that operation therefore I now proceed, in the meek spirit, I trust, of the student and inquirer; and with a mind to devote to his performance in all its aspects that respectful attention which Mr. Round's high position among students of ancient documents demands for every one of his works.

With Mr. Round's indictment, I take John Riddell's, which Mr. Round adopts, and to a great extent founds upon. In some respects, though not all, it seems convenient to take them together. A large part of Mr. Round's statement of the case in Foster's *Collectanea* would be difficult without much repetition, to comment upon, paragraph by paragraph in the order in which these occur, owing to the facts that that statement is a reply as well as an attack, and that the method he largely adopts in it is to deal with his antagonists *seriatim*. I shall therefore attempt to consider his arguments as far as possible in the order which Riddell had adopted previously in opening his original attack.

According to this order, the first efforts of the writers, whom I may call the prosecutors in this case, have been directed to prove that the heirs of the family who followed David never had any rights to the peerage. The second branch of their activities has been to show that the heirs who continued

the use of the title when Mr. Round says it was extinct were a line of impostors, and that these people showed that even they never believed in the reality of the claims they made, and which their descendants still make.

The Terms of the Lost Patent.

Both Riddell and Mr. Round admit that the peerage, which they say died out 'in 1701 or 1704,' stands nevertheless on the Union Roll of the Peers of 1707, and in the annotated Roll of the Peers transmitted by the Judges of the Court of Session to the House of Lords in 1740; that between these dates it appeared in the Coronation Rolls of 1714 and 1727; that from 1733 onwards the Lords Ruthven have voted at Holyrood as Peers, and that Douglas (*Peerage*, published 1764) states that it 'is 'understood' in consequence of these things that the dignity was to *heirs general.* To these facts they reply in effect: (1) that these authorities for the subsistence of the title are of little or no value, and (2) that there is evidence which is of greater, if not overwhelming weight, and which contradicts them.

Thus at the very outset of the examination it appears that the question whether the title and dignity of Ruthven exists or not is to be settled by the balance of evidence.

We have firstly, then, to ascertain the weight of the testimony of the official Rolls.

The Union Roll of 1707.

Mr. Round,[1] following Riddell,[2] pronounces the official Union Roll, 'this highly vaunted *rex rotulorum*,' to be evidence of

[1] In Mr. Foster's *Collectanea Genealogica*, 1884, pp. 174 and n., 180, 186.

[2] *Remarks on Scotch Peerage Law*, pp. 136, 143.

very little importance.[1] In proof he points out (1) that it omitted the extant titles of Somerville, Dingwall, and Aston of Forfar; (2) that it included the extinct titles of Abercrombie and Newark, and the dormant titles of Ochiltree and Spynie. As to the first argument, it is difficult, in the absence of any assistance from those who present the argument, to see how these omissions prove the character of the inclusions. Let us look, however, for a moment at the circumstances of the omitted peerages. The first, the lordship of Somerville, an ancient honour of which no creation charter now exists, had died out in the elder line in 1618. The last of that line had been a spendthrift. His brother is said to have omitted to assume the family title because he had not possession of the family lands. The title does not appear in the Decreet of Ranking of the Peers in 1606; and that is itself sufficient explanation of its non-appearance in the subsequent Roll of the Parliament, seeing that the title had not been asserted since. His descendant was restored to the Roll in 1723, but only after he had claimed and been found to have a right to the peerage.

The second of the omitted titles is that of the lordship of Dingwall. Here again is a title whose circumstances had been peculiar. Sir Richard Preston, the first lord, created in 1609, became soon afterwards in all practical respects an Irishman; married the only child of an Irish Earl and became an Irish Viscount and Earl himself. His daughter, the Duchess of Ormond, succeeded to his lordship of Dingwall and transmitted it to her grandson and successor, the second Duke, who was placed upon the Roll, but only after he had petitioned the House

[1] The Union Roll, the Roll of 1706, and the Roll and Report of 1740, are most conveniently consulted in Robertson's *Proceedings*, where they are to be found collected.

of Lords. In 1621 Lord Scone had a proxy in Parliament from Lord Dingwall, but no Lord Dingwall ever took his seat in the Scots Parliament. That is sufficient explanation of the non-appearance of the title on the Roll of the Parliament, of which the Union Roll was merely a certified copy.

The third case is that of the lordship of Aston of Forfar. That title was conferred by Charles I. on Sir William Aston of Tixall, in 1627. Lord Aston was an Englishman, and is not recorded ever to have sat in the Scots Parliament save on two successive days, 20th and 28th June, of the Parliament of 1633. He died in 1639. Neither his son nor his grandson ever took his seat. They lived in England as their forefathers had done.[1] Riddell declares that the omission of Aston is a 'striking corroboration' of the remarks he had already made as to the 'carelessness and inaccuracy' of the Union Roll. If a Lord Aston had exercised his Parliamentary functions shortly before it, the omission might have been so. But there is no presumption known to the law of Scotland that a man who was of middle age in 1627 was alive in 1707; Lord Aston's death—in 1639—may also have been known for a fact, and surely the officials who kept the Roll of the Parliament could not be charged to send to England to ascertain if the Lords Aston were still extant after they had not been seen in their place for well nigh seventy years. In the cases of Dingwall and Aston, and in the case of Lord Glasford mentioned anon, the framers of the Roll seem, in absence of knowledge, to have gone upon the usual presumption. Lord Glasford was to be presumed to be still alive, so he was retained on the Roll. Lords Dingwall and Aston were known or to be presumed from lapse of time to

[1] When Cromwell's officers made up their list of the Scots peerage of 1650 the surname of the noble family of Forfar, alone of all, was apparently not to be had, though they knew of the existence of the title of honour.

be dead. They could not be presumed to have left heirs of their titles. Their titles were therefore omitted.

As to the second argument, it is not now doubted that three extinct titles were placed on the Roll in 1707, namely, Abercrombie, Newark and Glasford. They were clearly copied on to it, like the rest, from the Roll of the last Scots Parliament of 1706,[1] and are to be found in Chamberlayne's List of 1708, a list which is praised by Riddell, but which must anon be examined. The first of these, *Abercrombie* (Sandilands), is believed to have died out in 1681. There was, however, for long after, a doubt about this peerage, as, though the *dispositive* clause in its patent limits the dignity to heirs male *of the body* of the grantee, a subsequent clause, taken literally, bears that the peerage is to be held by the grantee and his *heirs male*.[2] The second, *Newark*, has now been held to have become extinct in 1694, but the judgment was pronounced only after a document bearing to be a regrant of the peerage extending it to the later heirs had been held to be a fabrication.[3] The third, *Glasford*, was a life peerage only. Its Patent, dated 5 July, 1685, with that limitation on the face of it, was in the Great Seal Register. The only question that could have arisen in 1707 was whether Lord Glasford the grantee was dead or still alive. The Parliament knew him to be alive on

[1] Robertson's *Proceedings*, 222.

[2] The clause runs : '*Quodque dictus dominus Jacobus* [*Sandilands*] *ejusque heredes masculi et eorum singuli successive designentur et indigitantur Domini de Abercrombie*,' etc. (*Reg. Mag. Sig.* lviii. 119, 12 Dec. 1647). George Crawfurd wrote an Opinion on the Patent, in which, contradicting his previous statement in his *Peerage*, he stated that the title might be found to be extant. In 1739 a Committee of Privileges held a claimant of the title to be no peer, but, though the ground of its decision was probably that the peerage was extinct, it is not upon record so far as I know. (See, *int. al.*, Riddell's *Stewartiana*, p. 125 *et seq.*)

[3] Riddell, *Peerages*, 779.

28 April 1693 (A.P.S., IX., 251). In the absence of information to the contrary, he thus was presumably still alive in 1707, unless he was an older man than he seems to have been. That he died a debtor in the Fleet Prison, London, in November 1703 is known now. But we ought to have evidence that the fact was public in Scotland at the date of the Union Roll, before we pronounce the framers of the Roll 'careless.' Granted that in this particular they were 'inaccurate,' the case seems to be similar to those of Aston, etc., in that it was only a case of ignorance of what was occurring in a foreign country. Such ignorance creates no presumption that the framers of the Roll were ignorant of what was going on at home. The Roll, then, is comparatively accurate; out of the whole 154 titles the proportional error of 3—and of such 3—is not great. The existence of any error is perhaps sufficient to prevent the inclusion in the Roll of any title being considered a conclusive proof that at the date of the Roll the title subsisted; but its inclusion of a title whose circumstances were those of the Ruthven title is yet very strongly presumptive that the title was then existing.

As to the peerages of Ochiltree and Spynie, it need only be answered that the inclusion of dormant peerages in the Roll is nothing to the point. For, by the very statement of the case, they are not extinct peerages.

Mr. Round will perhaps be dissatisfied with the foregoing account of the errors of the document in question, for, again following Riddell, he informs us in a footnote that such was 'the carelessness and inaccuracy' with which the Union Roll was constructed that 'Douglas himself virtually confesses the 'inaccuracy of the test, for he, at the same time, observes that 'the Lords of Session, in their report, "found the titles of no '"less than twenty-five Peers of that Roll dubious"—so little

'reliance is there to be placed upon it!' (Round, p. 174, note; Riddell, p. 136). I am going to sift this statement to the bottom. I therefore begin by calling attention to the form of it. Mr. Round is not content with saying that there were twenty-five titles entered on the Union Roll, although it was doubtful if they existed or not, but that the Lords of Session of 1740 had found as many, and that these cases were so obviously doubtful that a very partisan of the Ruthven house, as he chooses to treat Douglas, virtually confessed their existence. Douglas did not confess or assert anything of the sort. His passage which is in question conveys only one meaning, namely, that the Judges in 1740 did not accept the Roll which had been applicable to 1707 as applicable to the year 1740 without a thorough revision, and it is as an index of the extent of their care in bringing the Roll up to date that he mentions the twenty-five cases which this revision had found should be held to be doubtful for 1740. But whatever Douglas said, let us to the facts, to ascertain if Mr. Round's statement, that the Judges had found that twenty-five of the titles on the Union Roll were doubtfully extant when they were placed there, is true or false.

The business of the Lords of Session in 1740 was not with the reliability of the Union Roll for the time and purpose for which it was made, but with the actual Roll of the Peers in 1740; and they made no deliverance on the Union Roll, but found that the Parliamentary Roll of 1706,[1] with the deletion of some titles, the addition of others, and the adjection of Observations of doubts of various kinds against twenty-five more, was, so far as they could ascertain it, the Roll of the Peers

[1] The Roll of 1706 was the basis of the Roll then in use at Elections of Representative Peers. It was not till 1847 that the House of Lords furnished the presiding officer at these elections, the Lord Clerk Register, with a certified copy of the Union Roll.

for 1740. It is these 'Observations' that Mr. Round claims as evidence that the Roll of 1707 was drawn up carelessly and inaccurately.

It may be observed that Mr. Round here, as well as Riddell, is supporting the thesis that the presence of Ruthven in the Union Roll does not prove that peerage to have been in existence in 1707; the presence therefore of other extinct peerages on the Roll can alone serve his argument. But what is the nature of the twenty-five doubts, the existence of which proves that 'so little reliance' is, for the purpose of this discussion, to be placed on it?

Only three of the twenty-five cases affect the credit of the Roll in this respect—as a roll of then existing peerages: they are the cases already mentioned of Abercrombie, Newark and Glasford. Of the remaining twenty-two titles observed upon, there is not one which can be said to have been non-existent when it was placed on the Roll. Six are cases of existing peerages, which, though still distinct, had, more or less certainly, come before the Union into the possession of holders of other existing peerages, some of them apparently permanently, some not necessarily so; namely, Ancrum, Findlater, Cardross, Jedburgh, Maderty, and Coupar. Five were peerages which seemed to have become dormant before the Union, but which could not be held to be extinct, viz.: Monteith (still in existence, and belonging either to the heir male or the heir general and of line of the last Earl), Oxenford (claimed), Ochiltree, Borthwick (afterwards revived) and Spynie. The remaining eleven cases actually related to eleven peerages which were undoubtedly extant and in exercise at the date of the making of the Roll, but which, since that date, had become extinct, or dormant, or had merged for the time at least in other peerages. They were Forfar, Dumbarton, Melville, Ruglen, Teviot, Duplin, Cramond,

Kirkcudbright, Bargany, Rutherford, and Eyemouth. So the charge of carelessness made against the Roll of 1707 falls miserably to the ground. Even Riddell's and Mr. Round's explanation of its errors, real or supposed, namely that the Roll has been transmitted to us in 'no solemn or authentic form, owing to the well-known hurry 'and distraction of the moment'[1] is bad, for the Union Roll was not concocted in an hour of hurry and distraction; but, as already said, was only a certified copy of the already existing Roll of the Lords which was used in the Scottish Parliament. If it was not, it was a strange corroboration of the statements of the Roll of 1706, for it is identical with it, in every detail. The observations of the Judges in 1740 could not have been mistaken for strictures on the Union Roll, if it had not been identified in the estimation of the critics with the Parliament Roll of 1706 which the Judges actually dealt with.

It is impossible to pass from this exposure of the inaccuracies of Riddell's and Mr. Round's statements regarding that Roll without observing that the carelessness which made these inaccuracies possible is very seriously to be reprobated, especially in any matter where what may be other people's rights of inheritance and *status* are involved.

The Union Roll, therefore, remains a document of very material as well as formal importance for the proof of any statement such as we have seen canvassed which it contains; its inclusion of any title whose circumstances were those of the Ruthven title raises a strong presumption of the subsistence of that title at its date.

[1] Riddell, *Peerages*, 171., Round, *Col. Gen. ut sup.* 186.

The Roll of 1740.

The annotated Roll of 1740 has been already partially described in the foregoing paragraphs. It was made up and transmitted to the House of Lords in the form of a Return in pursuance of an Order of that House of the year before, which demanded a list of the peers of Scotland whose peerages were still extant, and a statement, so far as the judges were able to make it, of the particular limitations of these peerages (Robertson's *Proceedings*, pp. 199-200).

The Judges excused themselves from performing the second part of their task—to state the limitations of the peerages which were continuing—a superhuman task and one which, if it had been attempted, would probably have resulted in a crop of controversies if not litigations. Their reasons were five in number :

1. The non-existence of patents in the case of the earlier peerages, and the want of any maxim of the law to determine descent where the original constitution does not appear.

2. The now imperfect state of the earlier Records.

3. The carelessness with which the more modern Records have been kept.

4. The practice of surrendering titles and obtaining new grants of them with destinations to new series of heirs.

5. The practice of entailing honours like lands and of obtaining powers of nominating heirs.

'Your Lordships will easily see,' they conclude, 'that the 'Lords of Session are not able to give your Lordships any 'reasonable satisfaction touching the limitations of the peerages 'that are still continuing.'[1]

The Judges thus confined their Report to the first part of their remit.

[1] Robertson's *Proceedings*, p. 221.

In the opening paragraphs of the Return which they made, they say that they have 'by committees of their own 'number made all the inquiry they have been able, by searching 'into the public records, and examining the proper officers 'to whose care the keeping of them is committed, in order 'to give your lordships all the satisfaction that is in their 'power.'

They then presented a Roll, which was in fact, though not in form, the Roll of 1707, with some additions, some omissions, and some qualifying observations. They had most properly deleted only those titles of the extinction of which they had legal evidence. Some of the titles, however, which they had perforce to leave on the Roll they still considered doubtfully proper to remain there without Observations being attached to them by the Reporters. These were in number twenty-five—the twenty-five cases already mentioned. Subject to their Observations on these titles, they certified the Roll as the true Roll of the Scots Peerage 'so far as with certainty appears to them.'

The title of Ruthven, it may here be observed, is not among the twenty-five, but, on the contrary, is among the titles which the Reporters pass without comment, because they appear to them certainly to subsist.

What then is there to be said against the reception of this document as weighty evidence of the subsistence of the Ruthven title at its date?

Mr. Round's argument which comes first in logical order, is the formal objection that the Report has 'no judicial or even 'official authority.' His statement is couched in what is, or appears to be, a quotation from the great pleading in favour of the heir of line of the Earldom of Mar. I must, however, preface the quotation by identifying the context in which Mr. Round introduces it. After having apparently exhausted

his argument derived from the declaration of the judges that they were unable to give the House of Lords 'any reasonable 'satisfaction touching the limitations of the peerages that are 'continuing,' he reverts to that topic, and after a sentence to say that the report was based on the Roll of 1707, concludes by asserting that Riddell had been 'reluctantly compelled to 'admit [!] that the Report contained "inadvertencies and mis-'"conceptions," while Lord Crawford . . . whose cherished 'authority my opponents must accept as conclusive [why, I don't know], 'disposes of this unfortunate document in these 'emphatic words.'— Then comes the following series of selections from his Lordship's work, printed as I reprint them: 'The difficulty found by the Lords of Session in 1740 . . . 'merely shows the extraordinary ignorance that existed on the 'question at that time in Scotland. . . . I may add that the 'report was drawn up exclusively by Duncan Forbes of 'Culloden . . . he was more acquainted with constitutional 'law than with matters of genealogy . . . that he had no 'power to call for evidence, but drew up the report from 'his own knowledge, practically single-handed, and during 'the intervals of official work; and that his colleagues of the 'Session, in whose joint names the report was sent, had 'nothing to do with it, except adoption, signature, and trans-'mission to England, while the report possesses no judicial 'character' (*Earldom of Mar*, ii., pp. 26, 27).

'*I have shown that the Report of the Court of Session in* 1740 '*was the work merely of one man, and has no judicial, or even official* '*authority*' (*Earldom of Mar*, ii., p. 94).

Mr. Round then refers to these paragraphs, the last of which he puts in italics, as an '*exposé* of "the Lords of '"Session," and "their elaborate (!) Report,"' and adds, 'So 'much for the evidence of this Report.'

Mr. Round does not say what 'difficulty' it is that he refers to, as found by the Lords in 1740. He leaves a blank, *brevitatis causæ*, I have not a doubt, but still unfortunately for the impression on the reader; for the passage he omits relates to a difficulty which he and Mr. Riddell do not anywhere name, and which does not relate to the difficulty which they allege and harp upon. That is the important fact. But, moreover, the difficulty is one which the reader would never imagine for himself, for it was the creation of an inadvertency and misconception of Lord Crawford's own brain.

The Lords had been ordered to return a Roll of the peerage as it was at the date of the return. They naturally began by enquiring if any Roll already existed. All that they found was that the Roll in use was an unauthenticated Roll which dated from 1706 and which had had some additions made to it. A copy of this Roll they transmitted as an Appendix to their Report.

Lord Crawford, it must be remembered, did not live to revise his work for the press; but his editor allowed the following observations to appear which were apparently in his Lordship's MS. The parts omitted by Mr. Round in his too elliptical quotation I enclose in square brackets: 'The diffi-'culty found by the Lords of Session in 1740 [with regard to 'the Roll of Peers existing at the time of the Union] merely 'shews the extraordinary ignorance that existed on the question 'at that time in Scotland. [The sheet of paper entitled "Roll '"of Parliament 1706, being a list of the Peers according to '"their ranks," being unauthenticated by the Lord Clerk Register, 'or by any official authority, was utterly worthless; and the 'clerks of the House of Lords must have smiled on perusing 'this passage of this Report when they had the entry before 'their eyes on the Journals of the House of the certified list

'duly sent by the Lord Clerk Register, of the Peers of Scot-'land as they stood on the Rolls of the Scottish Parliament 'on the 1st day of May, 1707—in other words, the Union 'Roll. The Lords of Session in 1740—or rather the eminent 'man who drew up the Report which they adopted, and which 'was forwarded to the House—cannot have been aware of 'this transmission and entry,] I may add'— and so on (*Earldom of Mar*, ii., p. 26). That is the 'ignorance' that Lord Crawford referred to. The omission of the sentences which I have restored to their places radically alters the meaning of the passage. Lord Crawford accused the Judges of 1740 of ignorance of the existence of a document. Mr. Round cuts up and resets his lordship's sentences till they convey the meaning that the Judges were extraordinarily ignorant of the nature of the peerages they had undertaken to report upon.

But Lord Crawford wrote hastily. If he had lived to revise his work, he would infallibly have seen that in the very sentence of their Report in which the Judges state that they transmit their copy of the 'sheet of paper' they state their object, viz.: 'that your Lordships may be able to discover whether this 'list agrees with that which was laid before your Lordships 'by the Lord Register of Scotland, in obedience to your 'Lordship's order of the 22nd December, 1707' (Robertson's *Proceedings*, p. 201).

The ignorance in Scotland in 1740, if it is at all illustrated by that of the Judges, was not so profound as Lord Crawford imagined, for they most certainly did know that the Union Roll existed in the House of Lords. And Mr. Round's 'difficulty of the Lords of Session' (1) did not pretend to relate to the subject of his remarks—the state of the peerage in 1740—and (2) did not actually exist at all, even with regard to the Roll of 1707.

I now proceed to Mr. Round's next statement that the report was the work of one man—a statement based again on Lord Crawford. And, for the fuller information of the reader, I again quote from Lord Crawford's book direct, using square brackets to mark the passages which Mr. Round omits, but which I think are usefully left in. Lord Crawford's words are: 'I may add that the report was drawn up exclusively 'by Duncan Forbes of Culloden [the Lord President of the 'Court of Session, a man of the highest ability and integrity], 'but better acquainted (Mr. Round puts it "he was more '"acquainted") with constitutional law than with matters of 'genealogy; [while the facts that the researches which he 'undertook with conscientious care, and which actually dealt 'with "all the peerages of Scotland," were confined within the 'space of eight months;] that he had no power to call for 'evidence,' and so on to the end of Mr. Round's quotation, after which Lord Crawford continues: 'These facts place the 'Report of 1740, *mutatis mutandis*, far below the level of the 'Decreet of Ranking in point of weight and authority.' With the Decreet, Lord Crawford, it may be mentioned, classes the Union Roll of 1707.

Here, again, Lord Crawford's reading of the Judges' Report has been hasty. The Report may well have been written by one man—reports usually are; but the report in question does itself most categorically and elaborately contradict the assertion that it was compiled from one man's knowledge; the extract quoted above, from its opening paragraphs, contains the refutation of that, and Lord Crawford would never have dreamt of making the assertion if he had come to re-read the Report. In his second volume, page 94, he says, referring apparently to the passage on pp. 26-7 of his first volume, that he has 'shewn' that the report is the work merely of one man. The

statement he had made, but the proof is lacking. The Lord President himself wrote, 'It has cost me several hundred hours' 'extraordinary labour this winter,' and well it may have done so; but his biographer does not claim the credit of the whole investigation for him.[1]

As to the 'judicial or even official authority' of the Report of 1740; will Mr. Round respect the Report a whit more if it has either? It is the fact, however, that the Report was adopted by the Judges as their report. How then can we escape from the admission that they conferred on the report which they adopted, their official authority? When, again, the House of Lords calls on the Judges for their opinions on one peerage or many, are their opinions not judicial? If, however, any sophistry should lurk behind the phrases official and judicial authority, let us look at the individual men who were then the Lords of Session; and hold the report as the collective affidavit of fifteen of the most eminent lawyers in Scotland of that day. The Judges, who, on 27th February, 1740, ordered 'their Report'—as the record of the Court terms it—to be signed in their presence and thereafter transmitted to the House of Lords, were Lord President Forbes, Lords Royston, Dun, Balmerino, Lord Justice Clerk Milton, Lords Minto, Drummore, Monzie, Strichen, Elchies, Murkle, the Earl of Leven, Lord Kilkerran and the Marquis of Tweeddale (Extraordinary Lord).[2] Lord Haining and Lord Arniston were absent. The latter, as the last appointed judge, was probably officiating in the Outer House.

The suggestion without a particle of proof, that, at the instance of President Forbes, these thirteen, several of whom were themselves peers, and among whom was, for example, Lord

[1] Hill Burton, *Lives of Lord Lovat and Duncan Forbes*, p. 361.

[2] *Books of Sederunt*, vol. xii.

Kilkerran,[1] virtually signed a report on the state of the peerage in their own day in ignorance of the truth of what they were saying is not worthy of a moment's entertainment.

It has of course been obvious all along that the citation of Lord Crawford's opinion against the judicial and official authority of the Report was somewhat beside the point when the thesis to be defended was that the Report was not actual evidence of fact. It would have been more relevant to have cited his lordship's verdict on the accuracy and reliability of the Report. But Lord Crawford had no fault to find with the contents of that 'learned Report,' as he called it (i. 86). The matter he had in hand was to prove that neither the Roll and Report of 1740 nor any other Roll had superseded the Roll of 1707 as the Official Roll of the Scottish Peerage. 'I say all this,' he declares, 'in vindication of the standing authority of the Union Roll 'as distinguished from the substitutes, which may shine brightly 'as kings in Lord Kellie's eyes, but are mere farthing rush-'lights in themselves, when the Roll itself—the "*rex rotulorum*" '—is appealed to.'[2]

A dilemma is apparent here. Mr. Round has appealed to Lord Crawford as an authority. Lord Crawford turns out to vaunt the '*rex rotulorum*.' Will Mr. Round take his authority as he gets it, or leave it?

But Mr. Round makes an attack of another kind, on the practical value of the Report as evidence, whatever its formal

[1] Lord Kilkerran, one of the ablest and most respected lawyers of his time, had eight years previously been the Chancellor of the jury, hereafter to be mentioned, who served James Ruthven as son and heir to his mother Isobel.

[2] *Earldom of Mar*, ii. 28-29. I may be allowed to refer also to pp. 16-18, 25-26, and 31, in which, after discussing the Decreet of Ranking of 1606, and the 'alleged imperfections' in the Roll of 1707, concludes that, 'if the preceding 'exposition be correct, the Decreet and the Union Roll are entitled to more 'respect than Mr. Riddell's words would sanction.'

authority may be. It is, in effect, that, albeit the House of Lords ordered a return of the particular limitations of all subsisting peerages, the Judges, nevertheless, made no such return; and that on the contrary they declared in their Report itself that they were 'unable to give any reasonable satisfaction touching 'the limitations of the peerages that are still continuing.'

The application of this statement to the matter in hand is argued to be that the Lords confessed here that they did not know whether the limitation of the Patent of Ruthven, or of any other peerage which they attested to be 'still continuing,' might not be of such a nature that that peerage was *not* 'still continuing,' but was extinct!

This attempted gloss has only to be stated to be dismissed. There is a wide difference between ability to come to a decision that a peerage subsists and ability to make a full statement of the, maybe complex, nature of its limitations. Take the example of the lordship of Torphichen, and take the opinion of Riddell himself on the same. He pronounced without difficulty that the 'present noble proprietor of the barony '. . . the principal site, and superiority of Torphichen . . . is 'in every way entitled to the dignity. But,' he adds, 'a curious 'question might arise on the supposed alienation of this privi-'leged spot and its pertinent in which it is inherent,'[1] and upon this latter question he is by no means positive, he only thinks that the honour would go with the land.

The Judges must have been amazed at the ignorance, unreasonableness and rashness of that part of the order. It was a fortunate circumstance that they were judicious enough to decline—as politely as possible—to comply with it. When we see how considerable was the knowledge evinced by the Judges of the patents of the peerages of which they expressed their

[1] Riddel, *Peerages*, 95, see also 88-96.

doubts, we are bound to believe that their knowledge was not a whit less when they expressed their certainties.

Riddell makes a weak suggestion that the Judges refrained, as a measure of prudence, from any remarks upon the subject of Ruthven ; because they knew that the peerage had been assumed, and saw 'nothing to affect it in those patents that met their eye.' But even were the suggestion otherwise easily admissible, it is impossible to entertain it here in face of the fact that the Lords refused to certify the peerages of Borthwick, Kirkcudbright, and Rutherford without most pointed 'Observations' on each of them, even though these peerages had, all three, been assumed at the date of the Report. In the feature of the absence of a document of grant or patent of the peerage, Borthwick was an exactly parallel case with that of Ruthven.

But that the Judges were actually ignorant of the terms of the patent of Ruthven is not by any means certain, for, as Riddell himself[1] points out, though with a different purpose, the report of the Judges was made long before the date of the burning of Freeland House, when the patent is said to have been lost, 15th March, 1750 (*Douglas Peerage*, Wood's Ed., ii. 464).

From what has been seen, it is now clear that the significance of the inclusion of the title of Ruthven in the Roll of 1740, as a subsisting title, can be done away with only by proof that other titles were admitted along with it which were extinct.

Mr. Round mentions no such instance in his principal article. His attack on the merits of the Report is limited there to a statement that Riddell had been 'reluctantly compelled to admit 'that it contained inadvertencies and misconceptions.' The proof of the reluctance the compulsitor, or even the inadvertencies, he

[1] *Remarks*, p. 137.

omits to give us; his reference to his authority, which he gives us instead, is to *Notes and Queries*, April 14, 1883. There I find a letter by Mr. Round himself in which he states that:

'As to the Report of the Lords of Session in 1740, it "con-
'"tains" (as Riddell reluctantly admits) "inadvertencies and
'"misconceptions," and it "recognised" at least two wrongful
'assumptions, namely, Newark and Lindores' (*N. and Q.*, April 14, 1883, p. 291). Mr. Round's reference here is to Riddell's *Peerage Law*, p. 780, on referring to which I find nothing about 'inadvertencies and misconceptions' of anyone; but, on the contrary, a mere statement that the peerages of Lindores and Newark, of which Riddell has been treating, were continued on the *Union Roll*, not the Roll of 1740, and a footnote, regard-
'ing Newark, that 'The Lords of Session, in their Report about
'Scottish Peerages in 1740, after noticing the patent in 1661,
'state that none had sat or voted in any shape, under the title
'of Newark, since 1690—*see* Acts of Sederunt, Edit. 1790,
'p. 345.'

This Observation on the Newark title by the Judges, to which Riddell refers us, ends with the words 'but whether it is extinct
'by reason of failure of heirs male of the body of the patentee,
'they cannot take upon them to say.' So much for Mr. Round's assertion of the 'recognition' of the title of Newark in 1740, and so much for his citation of Riddell as having asserted it before him.

I turn now to the other case of the recognition by the Judges of a 'wrongful 'assumption'—that of Lindores. This case differs from that of Newark; it is placed by the Judges in the same class as the peerage of Ruthven. But what is the proof that Riddell 'admits' that it was a case of wrongful assumption? And at the same time what is the proof that it was so?

The case of Lindores[1] is as follows:

Andrew Leslie, fifth Earl of Rothes, married thrice. By his first marriage he had James, his successor in the Earldom, and Patrick of Pitcairlie. By his second marriage he had no son. By his third he had John Leslie of Newton.

Sir Patrick of Pitcairlie became Commendator of Lindores, and was so named on 31st March, 1600, when, on account of his services and other considerations, King James VI. erected the lands, etc., of Lindores into a temporal barony and lordship in favour of his son Patrick Leslie, with the dignity of a lord of Parliament and the title of Lord of Lindores, destined to himself and his heirs male whomsoever, and assignees (Great Seal Register, 31st March, 1600, No. 1032). So the son was made a Lord of Parliament; but in a charter granted on 11th and 24th November, 1601, Sir Patrick, the Commendator, is himself styled Lord of Lindores (Great Seal Register, 26th Dec., 1601, No. 1267), and in an Act of Parliament of 1606, cap. 96, he is styled 'now Lord of Lundoris, 'some tyme Commendator of the abacie thairof,' while the son Patrick is 'now maister of Lundoris, than [then] stylit and 'designit thairintill [*i.e.* in the charter of 31st March, 1600] 'Patrik Leslie, sone laufull to the said Patrik Lord of 'Lundoris' (Acts Parl. Scot., Record Ed., iv. 355-6). There is nothing that I can find to remove the presumption that before the end of 1601 Patrick, the son, had exercised his rights under his charter of 1600, and assigned his dignity along with his lands to his father.

Patrick, the grantee of the charter of 1600, eventually succeeded to the title as his father's heir, and in turn was succeeded by his brother James, in the person of whose grandson David,

[1] *Douglas Peerage*, Wood's Ed., ii. 121, 122, 122*; Riddell, *Remarks*, 126, 127; *Peerages*, 777-9; Hewlett, 64.

in July, 1719, the direct male line of the Commendator died out. It is thus clear that the honour of Lindores was in existence at the date of the Union Roll, and that any wrongous admission of the title concerns the Roll of 1740 alone.

The title was then assumed in 1719 by a collateral male line—that of Sir John Leslie of Newton, younger (half) brother of the Commendator, in which line it was in 1740, and remained till 1793, when a vote of the Lord in possession, at a hotly-contested General Election, was, on a petition by the Marquis of Tweeddale and eight other peers, disallowed by the House of Lords.

The House found that the grantee of the charter of 1600, above mentioned, which was to heirs male whomsoever and assignees, was afterwards styled and treated as a commoner. The House concluded thence that that charter was then inoperative, and that the dignity enjoyed by the Commendator and his male issue for several generations was due to a separate creation. The Lords having 'presumed that some other patent 'had been granted,' then applied the maxim of Lord Mansfield and presumed that it was a patent 'limiting the honours to heirs 'male of the body.'

With the aid of these two presumptions the House of Lords pronounced a decision which struck at the title of all the holders of the dignity subsequent to the year 1719, including that of the holder in possession in 1740. But the decision of the Judges recognising the subsistence of the title in that year is not on that account bad.

The theory of the indefeasibility of peerage—that in this case a lord of parliament could not afterwards have become a commoner without an act of Parliament, and therefore that the grant of 31st March, 1600, had not created Patrick, the son, a lord,—was unknown to the law of Scotland before the Union;

and the presumption that a patent of unknown provisions contained a limitation to heirs male of the body was not law in 1740. No body of Scots lawyers would have entertained it before 1762, when it was invented and promulgated by Lords Mansfield and Hardwick in their majority decision in the Cassillis case (Maidment, *Reports*, pp. 31, 41, 63, 64, etc.). Riddell's later opinion, so condemnatory of that rule, is well known. His principal exposition of his views is contained in the first volume of his principal work (*Peerages*, pp. 172-193). When he comes, therefore, in the second volume, to mention the judgment of the House of Lords on the case of Lindores, he contents himself with saying that the House presumed a later grant of a peerage to Patrick the elder, limited 'according 'to *their adopted* rule, solely to the heirs-male of his body' (*Peerages*, 778)—the italics are Riddell's. His rubric on the next page is 'Possibly some ground for the decision though not 'for the presumed descent to heirs male of the body.'

The case of Lindores was therefore properly left on the Roll by the Judges of 1740, unless some better cause is shewn against it than that which was the *ratio decidendi* of the Lords on the petition brought before it by the politicians of 1793.

Here end in defeat the contentions brought against the Report of 1740. There is no doubt that the Lords' Reporters did not know everything, still, their position social and official, their opportunity therefrom, their professional capacity as well as their duty to make themselves acquainted with the facts, the form of their Report and the care which is evident in its compilation, make that Report a certificate of the existence of the peerage of Ruthven at its date, which can only be outweighed by very direct and overwhelming evidence of the contrary.

Crawfurd's Peerage.

It is difficult to believe that, of all people, John Riddell and Mr. J. H. Round should begin their constructive case by founding on George Crawfurd! But it is so. In Riddell's words[1]:—

'1. Crawfurd the peerage writer, although not the most acute 'or accurate of men, yet far honester than Douglas, and who 'besides was a contemporary of David the second Lord Ruthven, 'explicitly states that *he* "died unmarried in the 1704, and '"thereby (as he adds) the honor became extinct."'

Riddell in general had so poor an opinion of the 'peerage 'writers' of his country that in the Index of his later and best known work, the *Inquiry into the Law and Practice in Scottish Peerages*, 2 vols., 1842, he has an item:—'*Peerage writers*, '*Scottish*, their perpetual and glaring errors and misrepresenta-'tions' . . . yet confidently referred to, and adduced, not only 'by some solicitors, and inferior practitioners, but even by 'English lawyers.' Riddell must have been hard bestead for authority before he called a peerage writer to his help.

Mr. Round's strictures on the old school of genealogists who copied each other's accounts without investigation, and his declaration of the gulf that is fixed between that school and the new school which he represents, are not more friendly to the old school than are the observations of Riddell.[2]

Presumably, however, Crawfurd is here exceptionally well informed! His notice of the family is very brief. It contains only three dates, and two of them are wrong. It dates Thomas the first lord's death 6th May, 1674, whereas the most natural records for him to have referred to — the Registers of

[1] *Remarks*, 137; citing Crawfurd's *Peerage*, pub. 1716. *See also* Mr. Round, *Collectanea, ut sup.*, pp. 167, 170 and n.

[2] *Studies in Peerage and Family History*, Preface.

Retours—would have informed him that David, the second lord, was already served heir both *general* and *special* to Thomas, on 16th May, in the previous year of 1673.[1] The account then gives David's death as having taken place in 1704. But, again, the Records of the Commissariot of Dunkeld would have told him that Jean Ruthven was already David's executor dative in 1703. The fact was that David died in April, 1701. Crawford therefore does not appear to have enjoyed the advantage of any special acquaintance with the facts when he wrote his account, nor to have been specially anxious at the moment to be accurate. His account is wholly unreliable. Riddell has founded upon it without any examination, and Mr. Round has founded upon Mr. Riddell. Even as a corroboration of other testimony it is of exceedingly little, if indeed of any weight.

The nature of Crawfurd's testimony is, however, to be noted. It is that the title died with David, the last *heir male of the body* of the grantee. There were collateral heirs male in existence. Sir Francis Ruthven, husband of one of the grantee's daughters, was one of them. Crawfurd's testimony is, therefore, that the title was not to the *heirs male* of the grantee, but only to the *heirs male of the body*.[2]

Chamberlayne's List.

The second proof, in chronological order, is adduced by Riddell and by Mr. Round to prove generally that the peerage was non-existent when David's successors were assuming it:

[1] General Retours, xxxii. 29 (5631); Special Retours (Perthshire), xxxi. 246 (853).

[2] Since writing the foregoing I have learned that Crawfurd, in a Memorial of a later date, 1734, still extant, withdrew his expressions of 1716, and declared an opinion that 'James Lord Ruthven, son and heir of the late ladie 'Ruthven, is well entitled to this dignitie.'

'Neither in Chamberlain's list of the Scottish nobility in 1726, 'or in any list before the middle of the 17th [? 18th] century, is 'there any mention of the Peerage of Ruthven.'[1]

Chamberlayne's List is a list of Peers of Scotland which appears with other lists at the end of his *Magnae Britanniae Notitia, or Present State of Great Britain*, a London publication, the first edition of which under that precise title appeared in 1708.

Riddell elsewhere[2] asserts that the lists in this first edition of Chamberlayne's work were 'minutely revised and corrected' by our first antiquaries and authorities, and 'may upon the 'whole be more faithful and deserving of attention' than the Union Roll. On referring to that edition we find a prefatory note in which the compiler announced that his choicest lists had been furnished to him by Sir David Dalrymple, then one of the Solicitors General; Sir David Nairn, Secretary Depute; Mr. Seton of Pitmeddan; Mr. James Anderson, probably the author of the *Diplomata Scotiae;* Mr. Alexander Cunningham, etc. He omits, however, to say which of these gentlemen supplied his list of the Peers. It is thus after all anonymous. But, what is more serious, it is obviously an ignorant and random compilation. If it omitted Ruthven, it also omitted Viscount Primrose, extant till 1741, and Lords Kirkcudbright, extant till 1832; Spynie, never yet shewn to be extinct; and Borthwick, Dingwall, Colville of Culross, and Kinnaird, which exist to the present day. It retains the Earl of Portmore among the Lords and omits him from the Earls, though he was made an Earl in 1703. It asserts that the Earldoms of Airth and Menteith are conjoined with Montrose. If the Union Roll is to be blamed for including Abercrombie, Nairn, and Glasford, Chamberlayne's Roll includes them all, too, and in addition retains what the Union Roll

[1] Riddell, *Remarks*, 140; Round, *ut sup.*, p. 170.

[2] *Peerages*, p. 171 and n.

most properly omits, namely: the Earls of Middleton and Melfort, and the Viscount of Frendraught, titles which had been attainted before the Union.

Apparently Chamberlayne's *List of the Scottish Peers* was not one of his 'choicest,' nor 'minutely revised' by any one who knew anything of the subject. Its superiority to the Union Roll does not anywhere appear. Its untrustworthiness in every respect is obvious.

But Chamberlayne's work was of the nature of a periodical, and by the time we come to the List of 1726, selected for quotation in this matter of Ruthven, not certainly because it was most nearly contemporary with the date of the Ruthven Patent, or best authenticated by reference to his Scottish contributors, we find some but not all of the original errors eliminated. Viscount Frendraught is still there, and Kirkcudbright is still omitted. The Earldoms of Menteith and Newburgh are added to the omissions, and three lordships of Colville are present. There is nothing to indicate if the process of correction is concluded, or who was conducting it. Chamberlayne expressly says he did not compile the List originally; and the List by that time at anyrate had become a truly anonymous compilation published by no Scottish specialist, but by an English statistician of a general bent.

As a case of another list which excludes the title of Ruthven, Mr. Round cites the *British Compendium* (a publication which subsequently turned into the *Scots Compendium*). But let it be assumed that it and all such unofficial peerages of that day omit the title, and that their authors are not mere copyists in this particular of each other or of Chamberlayne or even of Crawfurd, and that they are of a better class than Sir Robert Douglas or John Philip Wood, contemned and vituperated by Riddell, still, even if they were uncontra-

dicted, their unsupported testimony falls far short of proof; and in the balance against the Rolls of 1707 and 1740 they are hopelessly outweighed.

Up to this point the commonplace ordinary student of documentary proof must have felt that in the matter of disproof of the official Rolls he has been to some extent trifled with. It is therefore with alacrity that he will turn to the examination, at last placed within his reach, of what Mr. Round announces as a contemporary manuscript of note. Here surely is something that is tangible.[1]

'A Contemporary Manuscript of Note.'

There is, says Mr. Round, 'no contemporary clue to its [the 'Patent's] contents save a "manuscript of note in the Advocates' '"Library," in which the dignity occurs in a list of creations, as 'having been granted to Sir Thomas Ruthven, "and to his heirs '"male."' This is a plain assertion that the manuscript is contemporary with the patent. Mr. Round's sole authority, to which he refers us, is Riddell, *Remarks*, p. 141. But when I turn to the specified page I find no direct assertion that the MS. is contemporary. I find, however, quite as remarkable a statement.

'. . . It so happens, that in a manuscript of note in the 'Advocates' Library, containing various patents and creations of 'honours, the very date of the Ruthven patent—which was upon 'the 3rd of January, 1651—is not only given, but it is further 'expressly mentioned that it was only limited to the Patentee, '"*and his heirs male.*" This last authority, therefore, if authentic,

[1] The one advantage which would have accrued from following Mr. Round's instead of Riddell's order of attack would have been that we should have reached this 'contemporary' manuscript sooner. Among the warrants, however, for the order I have chosen is the propriety of treating the manuscript in its proper chronological order, it being not at all contemporary.

'which there seems no reason to doubt, is again decisive, and 'obviously still more unequivocally, of the question at issue.'

Riddell's footnote reference is :—'Advocates' Library, Jac. V. '4. 16, p. 319. It forms the second volume of a collection of 'charters, pedigrees, and similar subjects.'

Would it be credited that this is Riddell's deliberate form of reference to volume two of the *Genealogical Collections* of Walter Macfarlan ![1] Macfarlan was the collector and transcriber of the whole of the contents of these volumes, which were in his repositories at the date of his death. They were not revised by him for publication, and there is indeed evidence on the face of them that they were not considered by him complete, or to be his final results—witness, *e.g.*, the note anent the omission of the title of Duffus, at the end of the list which is already in question (II. 398). He died in 1767. The date CMCCL. is part of his autograph title of his first volume, and, similarly, CMCCLI. is part of that of his second ; each date being presumably the date at which he began the volume to which it is prefixed. Mr. Round's contemporary manuscript belongs, therefore, to the latter half of the eighteenth century, a hundred years later than the patent. The List in question is a 'List' of creations of Lords of 'Parliament Since that Dignity came to be Constitute by 'Letters Patent. Anno —— (*sic*).' It starts with the patent of the lordship of Doun, dated 'penult [a mistake, it 'should be 24th] November 1581,' and ends with the creation of Lord Portmore, the last before the Union of 1707. It is entirely unauthenticated. Macfarlan, for his part, gives no clue to its original, if it was borrowed, as some of the contributions to his Collections were, and we are left to suppose, but only to suppose, that he compiled it from his own notes.

[1] Now in print : Scottish History Society, 1900, vols. 33, 34.

That even the original of the List dates from a time when the Great Seal Register was already in its present state is evident in several parts of it. Thus, in the account of the patent of the lordship of Dunkeld, 15th May, 1645, occurs the following: 'NOTA. The writing of the Patent is So much defaced and 'obliterate that the Limitation of the heirs in the honour can-'not be read.' There is nothing in the history of the Record to suggest that the part of it which belongs to 1645 was rendered illegible in the year 1651 or thereby, when the List would have had to be compiled, if it was to be contemporary with the granting of the patent of the lordship of Ruthven.

I come now to the contents of the List, which, it must be remembered, professes to be a list of patents of creations of lordships, and not only of extant or independent peerages of that class. It enumerates, in no strict chronological order, 53 of the patents which were granted within its period, and omits about 40. Of these 40, it is enough to name the lordships of Lindores, Blantyre, Balfour of Burleigh, Dingwall, Cranstoun, Fairfax of Cameron, Mordington, Duffus, and Nairne. In the cases which it professes to describe I have counted at least half a dozen in which it errs in the description of the destination, *e.g.*, the cases of Lords Paisley, Fyvie, St. Colm, Napier, Banff, Abercrombie; and double that number to which it gives a wrong date—the patents of Doune, Paisley, Spynie, Fyvie, Newbattle, Kinloss, Melville, Carnegie of Kinnaird, Ramsay of Dalhousie, Cramond, Dalziel, Johnston, Forrester, Banff, Elibank, Halkerton, etc.

Let me give two specimens of these mistakes more fully. Sandilands, Lord Abercrombie's patent of 1647, is described as to him and the *heirs of his body*. In the Great Seal Register the principal clause is to the *heirs male of his body*. Wood, *Peerage*, gives the correct statement. Again, the List contains an entry: '28 August 1618. Patent . . . To Sir James Ramsay

'of Dalhousie then Lord Ramsay of Melrose Changing his Title 'to that of Lord Ramsay of Dalhousie, and to his heirs male.' The facts are, that the title of Ramsay of Melrose was not changed into Ramsay of Dalhousie till 5th January, 1619, and that no such patent of 28th August, 1618, exists. That date is clearly a blunder for 25th August of that year, the date of the beginning, not the ending, of the title of Ramsay of Melrose. The dates are to be found in the Register of the Great Seal; and are given correctly by Douglas.

This 'authentic' and 'contemporary' 'Manuscript of Note' is thus neither authentic nor contemporary, is only notable for its omissions and mistakes, and is 'decisive' of nothing save the character of the documents which Riddell was reduced to depend on in support of his argument; and which Mr. Round has founded on on Riddell's authority without examination of his own.[1]

So much for the general character of the List. Riddell, however, speaks as if the fact that the List specified the date of the Ruthven patent as 3rd January was an evidence of its accuracy regarding that peerage, at least his language implies that the date it gives of the patent was ascertained from other sources to be correct. But he adduces nothing in corroboration of either the day or the month which it particularises. The List may be right or wrong, but it is itself the one authority for its statement. And in that particular also it seems to be contradicted by all the undoubted documentary evidence that I have as yet discovered;—the evidence namely of the Roll of Parliament of 1706, the Union Roll of 1707, and the Roll of 1740, all of which, as we have already seen, postpone Ruthven to two peerages which were created on days of that month later than the 3rd; and the

[1] G. E. C. in his turn (*Complete Peerage*, vi. p. 458, note *b*; and pp. 461-2, note *f*), founds upon Macfarlan's MS. on the authority of Mr. Round.

evidence, also already mentioned, that the patentee nearly three months later—on 30th March—was still sitting and acting in Parliament as a commoner. The credit, therefore, which Macfarlan's List lacks in the general it does not command in the particular—it proves nothing, by itself it is worthless, and as a mere corroboration of any evidence it coincides with, it is of exceedingly little or of no value.

Let it be noted, however, for what it may turn out to be worth, that Macfarlan states the limitation of the patent of Ruthven to have been to *heirs male*, thus admitting collaterals. He thus flatly contradicts Mr. Round's and also Riddell's only other positive authority, Crawford, whose story is that the limitation was to *heirs male of the body only*.

Either Macfarlan's or Crawford's version would be enough for Mr. Round's purpose to exclude the heir female or the heir of entail; but as both versions cannot be true the one cannot corroborate the other, and Mr. Round must elect which he will stand by, unless he abandons both. For the present his Case is as an house divided against itself.

The first three authorities—first at least in chronological order—which were set up as sounder and solider evidence than the Rolls of 1707 and 1740, have crumbled at the touch.

Lord Hailes's MS. Note.

The fourth and last authority is a statement by Lord Hailes. The observations attributed to that great antiquary which are here quoted relate to the summonses, which he and Douglas assert, and which Riddell and Mr. Round appear to admit, were issued, in respect of the Ruthven peerage, to the Coronations of Kings George I. and II. In comparison with the Judges' Report, which we have just examined at such length,

these summonses may seem to be by themselves an evidence of an inferior value. But if we accept them as facts, they prove at anyrate that the Lyon King of Arms of 1714—Sir Charles Erskine, and his successor in 1727, probably Brodie of Brodie—reported the peerage to be extant. These are facts of weight in any balance of the evidence for or against any peerage.

It may be remembered in passing that Douglas and Riddell, though apparently right as to the lady—Isobel—who was summoned in 1727, are clearly wrong in the Christian name of the lady who received the summons in 1714. She was Jean, if she was anyone, as will presently be seen. But whether the right lady or gentleman received the summons or not, the important fact is that letters were issued in respect of the peerage, on reports of the Lyon King of Arms, thirteen and twenty-six years after the extinction of the male line; and that they were issued to ladies—Jean and Isobel respectively—so that, even by the official most ignorant of their pedigree, the recipients could not have been mistaken for heirs male.

Mr. Round cites Lord Hailes's note, or quotes part of it, at different places in his main article on the peerage (*Collectanea, ut sup.*, pp. 160, 173, etc.). But owing to his almost incredible carelessness in transcribing one of its most important words, I resort to Riddell's quotation, to which Mr. Round himself refers as his authority.

The nature of the claim to the peerage, says Riddell, was 'known and appreciated by antiquarians last [18th] century; 'Lord Hailes, after stating that Baroness Isobel, in a jesting 'mood, called her summons to the coronation [of George II., '1727?] a patent,—declaring that she would keep it as such 'in her charter-chest, sarcastically observes, "that what she said

'"in jest, is now seriously insisted upon"; and he further 'informs us upon hearsay, that the pension in favour of Lady 'Ann Stewart, wife of James her [Isobel's] son and successor— 'whom he [Lord Hailes] styles "Mr. Ruthven," was granted 'to her simply as "Lady Ann Ruthven," and not under 'the designation of a Baroness' (*Remarks*, p. 142). Mr. Round in introducing his quotation says that 'we know from Lord 'Hailes . . . that the so-called Lady Ruthven *proclaimed*' that the summons was her patent; and in his transcription of Lord Hailes's passage 'what she said in jest' he alters it to 'what 'she said in earnest' (*Collectanea*, *ut sup.*, p. 173). The word in Riddell and Hailes is 'jest.'

Riddell's authority is '*Notes of Lord Hailes on Douglas Peer-* '*age*, *Advocates' Library*.' I cannot ascertain that any original notes of the kind were ever in that Library; all that it possesses now is a nineteenth-century manuscript dated 1803, bearing to be a copy of marginal notes made by that writer on a copy of Douglas's *Peerage* belonging to Miss Dalrymple, his daughter.[1] The MS. is not authenticated, but even if it were, it must be recollected that an author is not to be held to every passing memorandum in his autograph, which may be found at his death but which was unuttered during his life, as if it

[1] Adv. Lib., MS., 34.1.7, p. 24, entitled 'Copy (taken 23 Mar. 1803) Notes 'in the handwriting of the late Lord Hailes taken from a copy of *Douglas Peerage*, 'belonging to Miss Dalrymple, his lordship's daughter.' The note against the paragraph dealing with Isobel's Summonses, runs: 'In a jesting way she said that 'this was her Patent, and that she would preserve it as such in her Charter 'Chest—what she had said in jest is now seriously insisted on.

'N.B. I am told that the Pension to Mr. Ruthven's Lady 'is to Lady Ann Ruthven.'

Wood, editor of the second edition of *Douglas Peerage*, saw and made some use of these Notes. What he did not avail himself of, the Ruthven Note among them, Maidment printed in his *Analecta Scotica*, i. 168.

contained his final opinion, to which he had deliberately appended his name in a published work.

Granted, however, that the Notes were indeed Lord Hailes's, and that they commit their author as fully as if they had received his final revision for the press, he could not have made them till Douglas's *Peerage* was published, which was in 1764. In spite also of Riddell's attempted distinction, the whole note was hearsay; for Hailes, who was not born till 28th October, 1726, was not eleven months old when Isobel, the second Lady Ruthven, received her summons—in September, 1727—to the Coronation of that year; nor a full twelvemonth, when the Coronation took place—11th October, 1727; nor out of the nursery when, in 1732, she died. There is thus no evidence of the jest. Hailes does not name his authority—and the story was probably hearsay of hearsay.

But suppose that the lady did make the jest! What then? It would show that in 1727, or at least before 1732, no patent of the peerage existed—at anyrate in her hands. That would presumably dispose of the story that the patent survived to be burnt at the burning of her son's house in 1750. But the difficulty remains that there is no evidence that the jest was ever made; and that the earliest and only report of it dates from some rather indefinite time after 1764, possibly after 1783, either of which dates was years after the fire.

The person who in Hailes's time was said to be 'seriously 'insisting' on what Isobel is said to have made a jest of seems to be Douglas, on whose *Peerage*, opposite the passages dealing with the succession of Isobel, Hailes made his note. Lord Hailes, then followed by Riddell, who in turn is followed by Mr. Round, accuses Douglas of suggesting that a coronation summons might be viewed as a substitute for a patent, as if

what Douglas thought or said was relevant to the case! The only curious or interesting feature of this side-issue is that Douglas did not make any suggestion of the kind, and that his passage in question is very clear. It is that 'Isobel . . . became 'undoubted representative of this noble family. She succeeded 'accordingly, and had letters as a baroness to the coronations of 'both kings George I. and II.' (p. 602). Wood, in the second edition, says that 'Isabel, Baroness Ruthven, who succeeded her 'uncle David . . . had summons as a baroness to the coronation 'of George I. and also of George II.' The Summons in both works is spoken of as consequent on the succession of the lady, not the cause of it.

There is only one further observation to be made on the contents of Lord Hailes's Note. It is that, even if the wife of a peer were really called 'Lady Ann' on the occasion so imperfectly identified, the fact would be no evidence of any denial of her right to the peerage.[1]

Lord Hailes's Note thus proves nothing save that he personally did not believe in the survival of the peerage, and that he had no grounds for his opinion but hearsay; and that there is no evidence of the number of the succession of ears and mouths through which the hearsay had come before it reached him.

I have now examined the whole of Mr. Round's (and Riddell's) direct proofs of the non-existence of this peerage: *first*, George Crawfurd's ill-informed article; *second*, Chamberlayne's faulty and anonymous List; *third*, Macfarlan's List—as anonymous, and even more faulty; and *fourth*, Lord Hailes's Note, immaterial at best, and founded on hearsay of gossip. As evidence the first is nearly worthless, the other three are utterly worthless,

[1] A collection of instances in point, which is to be found in the Minutes of Evidence and Speeches in the Herries Peerage Claim, might be referred to were reference necessary.

and the last two of them are actually inadmissible to be considered as evidence at all. Taken all together and, for the argument's sake, admitted as evidence for what they may be worth, they are hopelessly outweighed and out-classed by the Rolls of 1707 and 1740, which they were brought to counterbalance.

The Conduct of the Family—Riddell's Version.

We now approach the consideration of the general evidence of the non-survival of the peerage furnished, it is said, by the conduct of the very members of the family who aspired to it after the death of lord David.

This part of the case has an interest of its own, for in it Mr. Round and John Riddell to some extent part company; they do not give the same account of all the facts, and Mr. Round gives much more space and prominence to the subject than does his whilom guide.

I am not, however, going to omit Riddell's version as irrelevant to Mr. Round's. It is interesting because it shows the premisses on which Riddell grounded some of his most violently worded conclusions—conclusions which Mr. Round adopts in language as well as substance from his own different premisses.

Riddell approaches this part of the subject with the assumption that the peerage, if surviving at all, must be so by virtue of a destination to the heirs-general of Sir Thomas the first lord. This he takes as 'admitted,' because—of all people—Douglas the Scotch *Peerage* writer, he says, 'admits it!'[1] But Douglas doesn't 'admit' anything of the kind. He is cautious and impartial. His passage occurs in the section, relating to James, (No. 6); and after stating that the patent is lost and is not upon

[1] *Remarks*, 139.

record, it runs: 'but if the honours were to the heirs-general of 'the patentee's body, this lord's title to the peerage is indis- 'putable.' Wood, in editing the great second edition of Douglas is also studiously careful and impartial. He goes no further than to say that 'it is understood that the destination was to 'heirs-general of the patentee's body,' as the title was retained on the Roll, etc. It is amazing to find how inaccurately and misleadingly Riddell has quoted Douglas. It is still more amazing, however, that he with his professions should quote him for such a purpose at all. But this was an exceptional occasion, and Riddell accepts what he says he finds in Douglas!

Then, depending again on Douglas for his central figure, Isobel, Riddell paints a picture of Sir William Cunynghame, his niece Isobel, and his sister Jean all simultaneously acting parts which were destructive of the theory that they believed that the title descended to the 'admittedly' only possible heir, Sir Thomas's heir-general. Sir William he represents as accepting his position of undoubted heir-general, and proceeding in respect of his descent to assume the family surname of Ruthven, 'showing 'his anxiety to represent the family as far as he could,' but 'venturing' no further; his niece Isobel, coming in the middle of the family, he represents as at the same time assuming the title and being summoned as a Baroness to the Coronation of George I. in 1714; Sir William's sister, again, Jean, coming at the end of the family, he represents as also assuming the title, 'however hesitatingly,' but during her niece Isobel's exercise of it; and he finally represents that James Ruthven, Isobel's son, assumed the title, not on his lady mother's, but on his aunt's death.

This was a most extraordinary tale. But no moderately expert or careful reader of Riddell's pages could possibly pay much respect to it. For while his text portrays Sir William Cunyng-

hame succeeding to the representation of the family in '1701 'or 1704,' and as such assuming the family surname, his footnote[1] proves that on 25th September, 1721, the year before that in which Sir William died,[2] he was still Sir William *Cunynghame* only.[3] There also the reader finds, to boot, an entail under which Sir William succeeded in 1722; and finds that under it he had to take the name of Ruthven as *heir of entail.* This does away with Riddell's story of his assumption of it in the character of heir-general, and of Sir William's supposed sentimental wish—the whole fable which was to ground the further suggestion that Sir William's mere omission to assume the title—if he did omit it—was a proof that the title did not exist! I know as yet of no evidence that Sir William ever behaved as the heir-general of the Ruthvens.

Riddell's creation of a simultaneous dual tenure of the title by the two baronesses, Isobel and the hesitating Jean, was constructed out of the following materials:

1. Douglas's statement that Isobel succeeded David and was summoned to the Coronation of 1714.

2. Riddell's discovery that Jean succeeded David and used the title in 1721.

3. Douglas's statement that Isobel was summoned to the Coronation in 1727.

It is clear that if, *e.g.*, Douglas had no proof that Isobel succeeded David and was summoned in 1714 Riddell's superstructure falls to the ground. It is unnecessary, however, for me to apply myself here to the examination of Douglas, as Riddell's tale of the competition between the ladies is not accepted by Mr. Round, and is shattered by the facts which will

[1] *Remarks*, 139, f.n. 1.

[2] October, 1722.

[3] Mr. Round, following Riddell, falls into the same self-contradiction.

be adduced in my examination of Mr. Round's story. Riddell's version, however, on account of its very errors, required to be told. With the fall of his premisses, falls the warrant for the language in which he couches his conclusions.

I gladly leave, even for a moment, the contemplation of the acute and accurate and uncompromising paladin of genealogy and peerage law beholden for aid from writers whom he has said he despised; setting out on his 'imperative duty' under the guidance of the 'neither acute nor accurate' George Crawfurd, and reaching his goal ostensibly on the arm of the 'flattering and 'unveracious' Douglas—such a rod and staff for John Riddell! Yet we leave him—true to himself on his last page—flinging his staff away, and exclaiming with his usual use of italics. 'We may now see to what *iust* conclusions we would have arrived, had we trusted to the very *veracious*, and *faithful* account of Douglas.'[1]

The Conduct of the Family—Mr. Round's Version.

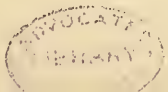
A Practical Joke!

It is at this point that it dawns on the student of the case which is made against this peerage that no attempt is to be made to prove one of the most damaging of the counts of the indictment.

Mr. Round states in one of his opening sentences, which I have already been obliged to transcribe in proving the cause and warrant for this present investigation, that 'in the second place' this assumption of the peerage under consideration 'originated 'in a joke.'

Now this is a remarkable statement, and could not have been made by a slip of the pen or the memory. Though it may not have been made with the knowledge of its importance in

[1] *Remarks*, 143.



the eyes of a lawyer, it cannot have been made without a sense of the ridicule and contempt it would ensure for all the subsequent serious pretensions to the peerage in the eyes of the general reader. I desire to call attention to the legal aspects of the assertion. The first observation which falls to be made is that whether the 'joke' turns out to be a joke of some humourist who imposed on the first person who assumed the title, or a joke of that person himself or herself, the only proof needed to end the whole controversy and disprove the very existence of the peerage is the proof of the joke. Even if it were not so, the proof of the joke would at once lay on the defenders the onus of proving some subsequent ratification of the supposed honour which rendered it serious. The diligence, however, with which so many other inferior arguments are marshalled to supply the office which this single story of the practical joke, if it could be told, would execute, prepares us for the discovery that the story is not forthcoming, and persuades us that the story does not exist.

Mr. Round has constituted himself the accuser as well as the pursuer in this case; and has made it his business to prove not only that the peerage does not exist, but that the earlier bearers of it knew that it did not exist. The task I have set before myself is merely to ascertain if he has made out such a *prima facie* case that the defence ought to be called upon to rebut it. The absence of any proof of any ordinary statement of his is therefore merely an alleviation of my duty to sift his proofs. But such a damaging and prejudicing statement as the one I now allude to, made as long ago as in 1884, and since repeated in effect again and again at intervals, and never attempted to be substantiated, cannot be passed over without the observation that, by the canons alike of historical investigation and of literary discussion, a disputant is under an

imperative obligation to prove the truth of a statement of that kind or to withdraw it.

Douglas's Peerage.

I shall deal with Mr. Round's charges against the individual members of the family *seriatim*; but, before proceeding to do so, I have to examine a general charge which he brings against their line—that it assumed the title under one theory, and continued it under another which Mr. Round suggests was inconsistent with the first. Mr. Round's statement in his own words which, unfortunately, I must now transcribe, occurs incidentally in an attack which (at pp. 170-1) he makes upon Douglas. It runs as follows—the italics are his own :—

'But the Ruthven honours had been *inconsistently assumed*, 'first as descendible to *heirs of entail*, and then as descendible 'to *heirs of line*. It was therefore impossible, in the face of 'these facts, to construct a consistent story. Here is the gist 'of the whole matter. *It was only by deliberately falsifying the* '*facts that it would be possible to construct a consistent story and to* '*homologate this audacious assumption*. Douglas was equal to the 'occasion. Less honest, as Riddell observes, than Crawford, he 'plainly saw that in order to establish the more convenient of 'the two hypotheses, namely, that the "honours were to the '"heirs-general," it would be necessary, on the one hand, rigidly 'to suppress the fact that they were first assumed by the last 'lord's sister *who was not his heir-general*, and on the other to keep 'out of sight the fact that they were not assumed by Sir William 'Cunynghame *who was*.'[1] Mr. Round made this attack on Douglas in 1884. He did not even pretend to adduce any proof of the propriety of his charge. But in 1901 he repeated it and extended it to other writers. 'In order to homologate the

[1] Foster's *Collectanea, ut sup.*, pp. 170-171.

'assumption, and present a consistent story, the pedigree,' he says, 'had to be falsified by cutting out both "Baroness" Jean and Sir 'William Cunningham, and passing straight to "Baroness" Isabel! 'The existence of the two former being a fatal flaw in the case, 'they were carefully kept out of sight by Douglas, Wood, and '"Burke" in turn down to 1883.'[1] Why does he not add that Douglas & Co. were ably aided and abetted by Mr. Joseph Foster and Mr. J. H. Round, who actually went a step further and *omitted all reference to Jean* from Foster's *Peerages* down to 1883 inclusive? If he in 1883 did not know of Jean's very existence, what evidence has he that Douglas and Wood, at the dates at which they wrote, knew of Jean's exercise of the title? Did Douglas know all that Mr. Riddell and Round have since discovered? And where was the inducement to Douglas any more than to Mr. Round to keep these personages out of sight?

In a case of this kind the prosecution has to make out a probable case before the accused is called upon to defend himself. I am therefore concerned only to ascertain whether the statements of Mr. Round will stand investigation. Those I have as yet examined have crumbled to pieces in the handling. And this attempt to get rid of Douglas's impartial memoir of the peerage by exhibiting him as a fraudulent person, a deliberate falsifier of history, has, like the rest, notably failed.

It is on the actions of the heirs of the Ruthvens, however, and not on the twilight views of any writer that the discussion turns here. Isobel and her successors may have taken up the title as heirs of line of the patentee; but even though Douglas 'admitted' it, that was not the only possible limitation by which the title reached them. The Scots law, as Douglas and Riddell knew, is familiar with cases of honours limited to heirs

[1] Mr. Round, *Peerage Studies*, 97.

of entail, and there is no proof that entails were absent in this case, but something of the contrary. There was a deed of nomination of heirs of entail of the hereditary lands of the family. The line of that entail coincides to some extent certainly, and in its whole extent possibly with the line which the peerage has followed. So much we know, but we don't know

1. Whether the entail of the lands was merely to keep them in the line already fixed for the peerage; or,
2. Whether the peerage was destined to the heirs of the investitures of the lands.

Either of these alternatives may have been in accordance with the facts. I state them merely to show that it is not possible to demand that the title, if not merely to heirs male, shall be held to be to heirs female merely, any more than to say that on failure of the last heir male, a title which is eventually to heirs goes necessarily to the eldest daughter of the grantee.

Mr. Round's assertion, then, that the heirs assumed the title as heirs of entail may be true. But his proof that thereafter they continued to hold it by an inconsistent title is non-existent. Isobel and her descendants were well entitled to decline to be bound by the action of Jean in their interpretation of the patent. When we glance at the facts of the descent, however, we see that no member of the line in question held the title who was not an heir of Lord David's entail, and none of these heirs assumed the title out of his or her order as an heir of that entail.

Granted that the title came, eventually, to be held by the heir of line, it none the less continued in the heir of entail; for the heir of line and the heir of entail united in the person of Isobel (No. 5 of the Pedigree). It is thus impossible for us, in the present state of our information, to attribute to any of

the heirs about to be named, the precise theory according to which he held himself to inherit the title; and to judge his conduct thereby. Subject to these observations, I proceed to consider Mr. Round's attempts to show that all the Ruthvens who took up the title after David—believed, he does not, perhaps, as we have seen, know what but at anyrate—disbelieved in their own right, whatever it was.

Jean Lady Ruthven.

The Hon. Jean Ruthven, No. 3 of the pedigree, was the first to assume the title after her brother David's death; and she is naturally the first object of this part of the attack. The counts against her amount, of course, to fraud: that she, in fact, took up a title to which she knew she had no right! Mr. Round's evidences of this, deduced from her conduct, are:

1. Her delay in assuming the title,[1]
2. Her 'caution' thereafter in the use of it.[2]

Her Significant Delay.

With regard to the first evidence. It must be premised that the old custom in Scotland, and doubtless the custom once in all other feudal countries, was for the heir to postpone the assumption of a title of honour until he stood vested in the noble fief, and, for some time after the introduction of the theory that dignities are in the blood and vest without ceremony, service and infeftment were allowed to precede their assumption. The attribution and use of the title before these formalities were thus of the nature of a usage of courtesy. In all long transitions there is much irregularity of practice. There was great delay, we find, in the completion of Jean's infeftments; some dispositive document was clearly lost or lacking. We are therefore pre-

[1] *Collectanea Genealogia, ut sup.*, 168. [2] *Ibid.*

pared to find a proportionate and even greater delay in her assumption of the title.

But the first question is, did she so delay in taking the title? She may easily have anticipated the old time for assumption. It was very usual, by the beginning of the eighteenth century, to assume the title at once, or to do so immediately after the funeral. Mr. Round's full statement, however, is as follows: 'It is not till some twenty years after his [David's] 'death that we obtain the first definite evidence of an attempt 'to assume the extinct title' (*Col. Gen.*, *ut sup.*, 168).

This is a most important statement and requires examination. For this, then, I naturally turn to the Public Registers of the county of her residence—Perthshire. I find there that David, Lord Ruthven, died in April, 1701.[1] But I also find that:

1. On 10th December, 1702, his sister Jean received sasine on a heritable bond of an annual rent granted in her favour by David Olyphant of Colltouchar. In the notarial instrument of sasine, and also in the bond, she is styled Jean, Lady Ruthven.[2]

2. On 12th November, 1709, in a renunciation and discharge of this same annual-rent, she styles herself in the same way—Jean, Lady Ruthven.[3]

[1] Service of Jean, Lady Ruthven, as heir in special to David, Lord Ruthven, 9th September, 1721, regd. 3rd Oct., 1721, Perth. Both Riddell and Mr. Round quote this service, but stop ere they come to the point where it contradicts their 'contemporary' authority, Crawfurd's 'explicit' statement that David died in 1704, and supports the blackened *Douglas*, yea and *Burke* too. *I* do not say, nor suppose, that this date was 'carefully kept out of sight' by Mr. Round; he never saw the document, but quoted it at second hand from Riddell's 'unsupported statement.'

[2] Sasine dated 10th, registered 22nd December, 1702, in the *Particular Register of Sasines* (Perth), xiv. 260.

[3] Discharge dated 12th November, registered 10th December, 1709. *Part. Reg. Sasines* (Perth), xvi. 44.

3. On 26th January, 1712, in an instrument of sasine of subjects in Forteviot, she is styled by the Notary Public officiating 'ane noble lady Jean, Lady Ruthven.[1]

There are these three instances at intervals of one, eight, and eleven years, more or less, from 1701, yet Mr. Round tells us that there is no definite evidence of her assumption of the title till 'some twenty years' after that date!

When he comes to 1721 he begins thus:

'On the 9th September, 1721, she [Jean] caused herself as "Jean, Lady Ruthven," to be served heir in special to him [David] in the Ruthven estates.'[2]

The suggestion is ridiculous that a person in Scotland might assume what designation he chose in such a process whether he was entitled to it in law or courtesy, or in neither. The proceedings, unless in a competition of heirs, were *ex parte*, but they were conducted publicly and formally, and the members of the jury were by statute personally liable for their error. In this case the proceedings were held in the Sheriff Court-room of Perth. The Sheriff Depute,[3] Robert Craigie of Carie, advocate, presided, and the jury consisted substantially of the Provost and Bailies of Perth.

It should be noticed, in view of what follows, that all the four documents above cited were notarial instruments—public legal documents.[4]

The charge of significant delay on Jean's part has thus fallen to the ground, *firstly*, on account of the non-existence of the significance, and *secondly*, on account of the non-existence of the delay.

[1] Sasine dated 26 Jan.; reg., 30 Jan., 1712. *Part. Reg. Sas.* (Perth), xvi. 261.

[2] *Ut supra.*

[3] It may be stated, for the information of Mr. Round, that a Sheriff Depute in Scotland is an officer somewhat like a County Court Judge in England.

[4] See Macqueen's *Note*, Herries' Case, 3 Macq., 593.

Her Cautious Use.

I now approach the second charge against Jean. It is her 'tentative and fitful' and 'cautious' use of the title after she had made up her mind to assume it. 'It would seem, then,' says Mr. Round, 'that this lady, so far as we can see, was personally 'anxious to assume the title, but did not venture even in that 'easy-going age to do so in legal documents, which might, even in 'Scotland, (*sic*) have been invalidated by her use of a style to 'which she was not entitled' (*Collectanea*, *ut sup.*, p. 168). From what we have seen already, Jean did not draw any hard and fast line at legal documents.

Mr. Round gives three cases subsequent to the time of her use of the title, in which she, he argues, deserted it and styled herself 'Mrs. Jean Ruthven':—

1. In a petition to the Court of Session on 4th November, 1721;

2. In a deed of assignation 'some months previously' to 9th September, 1721;

3. In her will.

The *first* of these cases, the petition to the Court, of 4th November, 1721, is of course open to argument. The first observation that occurs is that the change of designation, whatever the reason of it may be, does not ground a charge of vacillation. Though the lady is the same, her law-agents were probably different—an Edinburgh firm, and not her solicitors in Perth who acted in her affairs in the Commissary Court of Dunkeld as will be seen. The second observation is that the case is one apparently of conformity to the ancient custom already mentioned of omitting the title of honour in formal proceedings till the title to the landed fief is complete, and that judgment on it should be suspended until it is seen if there

is any practice in the family that can be said to warrant the belief that the existence of the honour is not thereby denied. But beyond this there is here another element. The petition in which she or her lawyers, as already said, design her only Mrs. Jean Ruthven, was her belated petition for the recording of her brother David's entail.[1] She was therefore properly designed in the petition by the name she bore in the deed under which she obtained her interest to petition. In any deed executed by her brother she was necessarily called Mrs. Jean. The question here again is whether the omission of the addition to her designation of the words 'now Lady Ruthven' is attributable to any system or practice of her lawyers.

Riddell innuendos her conduct here as an evidence that she feared 'the scrutiny of the Court of Session.' But the suggestion does not account for her illustration of the same principle in another instance, for on 4th January, 1703, soon after Jean succeeded her brother, she was made his executor dative under the title of 'Mrs. Jean Ruthven.'[2] In both cases if she had followed the newer practice almost universal in the eighteenth century she or her law agents would have added to her designation the words, 'now Lady Ruthven,' but they would not have omitted the other name.

The *second* instance, in the order in which Mr. Round takes them, is that of the assignation of 'some months previously.' The explanations, which seem to meet the case of the petition to the Court of Session, do not apply here. Mr. Round's reference is as follows, and the italics and the marks of omission are his own :

'"A general clause in assignation granted by *said Jean Ruthven* '"to the said Mrs. Isobel Ruthven . . . which assignation is

[1] 4th November, 1721, Reg. of Tailzies, v. 329.

[2] Dunkeld Testaments, General Register House, Edinburgh.

'"of date 27 April 1721; recorded in Sheriff Court books of '"Perth 27 August 1722" (*Dunkeld*, vol. iii. fo. 75).'[1]

What does Mr. Round quote from? Is it a printed book or some one's private notes? By the form of the note it bears to be from the Dunkeld Commissariot Register, which it clearly is not. And when I turn to the Register itself, what do I find? The passage, which Mr. Round affects to quote, runs as follows; the italics, etc., here, are mine:

'a generall clause contained in ane assignation granted by *the* '*said defunct* to them of the date the twenty sevinth day of Aprile 'I^m vii^c and twenty one years, and registered in the Shirriff Court 'Books of Perth upon the *seventh* day of August I^m vii^c and twenty 'two years.'[2]

I print the whole entry in the Register in an 'Appendix, p. 77.'

The 'defunct' is undoubtedly the lady in question, but elsewhere in the confirmation, in which the passage occurs, she is styled, 'Jean Lady Ruthven,' and in it she is not styled in any other way. Mr. Round's quotation is therefore incorrect both in form and in substance. But in order to find if there is any explanation of his mistakes I have referred to the Sheriff Court books themselves, in which the original registration is said, in the Commissary's book, to occur. There I find that the assignation is dated 27th April, 1721, and registered 7th August, 1722, and is granted by 'Jean, Lady Ruthven.' Mr. Round, who came to curse, has blessed altogether, and there is nothing more to be said.

Of the lady's vacillations, so extremely difficult to prove, only one of Mr. Round's proofs, the *third*, remains. But this proof is that 'she also made her will as "Mrs. Jean Ruthven."' On

[1] *Col. Gen. ut sup.*, 168.

[2] Dunkeld Commissariot Reg., (Gen. Reg. Ho.,) iii. 75.

that solemn occasion, at any rate, she could no longer masquerade! But, again, what is Mr. Round's authority? His footnote is the following, with the same curious quotation marks and italics:

'"Testament-dative of *Mrs. Jean Ruthven* of Freeland, who '"died in April last: given up by William Ruthven, alias '" Cunnyngham of Freeland executor dative as nearest of kin "'— 2 August, 1722 (*Ib.* [Dunkeld Commissariot] 'vol. ii. fo 353).'

Now, a man may be able to read *Domesday Book* and the *Close Rolls*, and be a learned person in any one of many departments in history or record study without knowing what a 'testament dative' is. But it is useful in Scots genealogy to know that it is not by any means a 'will,' but something of just the opposite. A Testament dative is an appointment of an executor by the Commissary (now the Sheriff) because the deceased has died intestate. Mr. Round, to prove that Jean did something in her will, has cited an authority which proves *per se* that she died without one.

What Jean was styled on this occasion after her death was the affair of her executor, if it was intentional, and shall be considered naturally when we come to him.

Before we leave the consideration of her conduct, however, Mr. Round's introductory assertion that the assumption of the peerage by the female line of the house 'originated in a joke' occurs again to mind. I find no trace of it in Jean's assumption, nor any attempt of Mr. Round's to prove it.

Jean, Lady Ruthven, died in April, 1722, without taking any further proceedings that I have ascertained towards completing her feudal investiture, after which, by all customs, she would have been entitled to call herself a baroness. Mr. Round, nevertheless, has failed to shew that she delayed her assumption of the title, or to shew that she ever thereafter deserted it from either change of mind or motives of policy.

It is not to be forgotten, that it was in the time of that lady that the Union of the Kingdoms took place, and the Union Roll of the Scottish Peers was certified, which, as we have seen, included the title. Douglas's statement also of the issue of a Summons, in 1714, to the peeress of the day (Jean, though he says Isobel was the name) to attend the Coronation of George I., has not been disproved or even contradicted.

Sir William Cunynghame.

Sir William Cunynghame (No. 4) succeeded in April, 1722, to the entailed estates. According to the unknown terms of the patent he did or did not succeed to the title of honour at the same time. But Mr. Round assumes (1) that if the title existed, it was Sir William's—had been his indeed since David's death in 1701, (2) and if it was Sir William's he would have taken it up. Sir William did not take it up. So Mr. Round argues that he knew it was not his; and that Sir William's omission proves that the peerage did not exist!

How unwarranted the first of Mr. Round's assumptions is I have already shewn. The only warrant for the second of them must be that there were some facts in Sir William's case, on account of which his omission to use honours he was entitled to meant more than other people's omissions do.

Sir William died in the October following his succession,[1] before he had been served heir to his aunt or his uncle, or their father, and before he was infeft in the estates; not before he had been appointed Jean's executor-dative, but before he had taken any steps to wind up her affairs.[2] It is unnecessary therefore to rehearse that he was also childless, the last of his family, a man who had come through much persecu-

[1] Dunkeld Commissariot Register, ii. 383.
[2] Dunkeld Commissariot Register, ii. 395.

tion and who therefore was probably prematurely old, who, being near his death was very possibly ill and weak, and who certainly was steeped in debt. But when one recollects what is known to the merest tyro in law, that the omission to exercise a right does not prove its non-existence; and that the history of families abounds with cases in which undoubted heirs, and sometimes successions of heirs, have omitted to assume their titles of honour, one is amazed that Riddell should have said that in Sir William Cunynghame's case, of all cases, the omission was 'striking.'[1] It seems the statement of a zealous advocate in a Court, not the opinion of a jurist or of a historian.

What madness had seized the prophets I have not to enquire, but this nonsense completely captivated Mr. Joseph Foster, who with the help, I assume, of Mr. Round, pronounced his judgment that 'The fact that Sir W. Cunninghame, who died 'in 1722, did not take the honours is entirely destructive of 'this unwarrantable assumption'—namely, that the peerage was limited, by its patent, to heirs-general.[2] It was also conclusive to Mr. Round, who, writing over his own name, decided that Mr. Foster observed justly, and that the evidence was 'clinching.'[3] G. E. C. declared that the fact that Sir William did not assume the title is inexplicable if the title was open to him to assume.[4] Riddell must have been acquainted with many cases of more notable omissions to assume honours. And Mr. Round must at anyrate have been aware of the case of Somerville, a peerage which he himself mentions in connection with this very case.[5]

[1] *Remarks*, 139. [2] *Peerage*, 4th Ed., 1883.

[3] *N. & Q.*, Mar. 3rd, 1883, p. 168. Perhaps this position has since been slightly modified. 'Significant' is the term in *Col. Gen.*, 169.

[4] *N. & Q.*, Feb. 24th, 1883, p. 153.

[5] *Col. Gen.*, p. 174.

In such a case as Sir William's then, we are bound to assume, so far, that omission to take up a title of peerage signifies nothing with regard to the peerage. When he succeeded to the Freeland estates under the entail, he, or his lawyers (who were also among his creditors), used for him the surname 'Ruthven or Cunynghame.' That was obligatory under the entail, and the entail did not mention the title. What proof is there that, if the title was his, and he had lived a year in health, he would not have taken it up?

Mr. Round has two proofs that Sir William did not assume the title; but no proof of his reason for not doing so. They are:—

(1) In the decreet appointing Sir William executor to his aunt and predecessor Jean (the case already mentioned, of 2nd August, 1722, thought by Mr. Round to refer to a will), she is styled without her title of peerage. Mr. Round informs us (p. 169) that 'Sir William' is so styled in the decreet; but he is not so, for the decreet styles him equally without his title of baronetcy—plain 'William Ruthven *alias* Cunyngham.' If the first omission proves her not a peeress, the second proves him not a baronet, and if Mr. Round could saddle Sir William with personal responsibility for the terms of the decreet, it would more certainly operate against the knight than against the lady.

(2) Sir William preserved his baronetcy title 'also in his own will.'[1] Perhaps Mr. Round should have said that Sir William *reverted* to his title! For there is exactly the same evidence that he vacillated in his pretensions to his baronetcy as there is that his aunt Jean did so regarding her peerage. Whether Mr. Round has lighted on the proof or not, the records of the Commissary Court of Dunkeld alone provide at least

[1] *Col. Gen., ut sup.*, p. 169.

half a dozen corroborations of the fact that whether the title of peerage was ever Sir William's or not he did not assume it. To avoid misunderstandings however, it is necessary to point out that Mr. Round's 'will' is again no will! It is our old friend, the 'testament dative,' for poor Sir William died not only insolvent but intestate; and what Mr. Round has lighted on is the work of Sir William's cousin Isobell, who has been appointed an executor-dative *qua* creditor on his estate.[1]

Isobel Lady Ruthven.

Isobel Ruthven, (No. 5,) daughter of Elizabeth, and her husband Sir Francis Ruthven, succeeded Sir William under the entail. She and her successors in the title to the present day have been heirs general, as well as of entail of David, and heirs general and of the body of Sir Thomas, the first Lord. Her conduct in relation to the peerage is the next object of attack; and the first weapon used by Mr. Round is the fact that her predecessor, under the entail, Sir William, did not assume the title. His conduct of course was due to the power of an ordinarily scrupulous conscience! for, says Mr. Round, and this is the way in which he puts it, 'on "his less scrupulous cousin "Isobel" '[phrase borrowed from 'G. E. C.,' *N. and Q.*, 24th Feb., '1883] succeeding at his death to the estates, she resumed the 'attempt initiated by her aunt, and styled herself "Lady '"Ruthven."' (*Col. Gen.* 169.)

Mr. Round, however, admits herein that Jean the aunt not Isobel the niece 'initiated' the assumption by this female line; and also that Isobel took up the title on or after Sir William's death. The last vestige of Riddell's picture of the family

[1] Mr. Round's footnote here is '"Testament dative of Sir William Ruthven '"*alias* Cunyngham of Cunynghamhead, who died October last." Given up 28th 'March, 1723 [Dunkeld, ii. 383].'

party is thus blotted out—the spectacle of Isobel exercising the title in her aunt's and cousin's life time. But Isobel also assumed the title within a year of her Aunt Jean's death. Which of them then did she succeed in the title? Mr. Round's attention, however, is here devoted to the consideration of her acts of assumption. He says that on 28th March, 1723, when she gave up Sir William's 'will' she was styled Lady Ruthven, 'on which 'occasion also she caused her Aunt to be documented "Jean, '"Lady Ruthven." Yet, significantly enough, more than three years 'later, she gave up under the humble style of *Mrs. Isobel Ruthven*, 'the "additional inventory" of her Aunt, here ambiguously docu-'mented Lady Jean Ruthven.' Note that her assumption here of the title is not 'significant' of the lady's belief; the desertion alone is! But let us to the facts.

Mr. Round's footnote identifies the document he quotes as of date 20th October, 1726, Commissary Books, Dunkeld iii. 75. On turning to the Register itself I find, first, that it is a record of an 'eik,'—the contents of an assignation by Jean, Lady Ruthven, of 27th April, 1721, to Mrs. Isobel Ruthven, registered 7th August, 1722, the identical record quoted already by Mr. Round in his attack on Jean, only that on the former occasion he said she was called plain 'Jean Ruthven,' whereas, now, he says she was called 'Lady 'Jean.' In both cases he is wrong; the record, as I have already proved, calls her Jean Lady Ruthven and nothing else.[1] As for Isobel, she is truly called 'Mrs. Isobell Ruthven' in her aunt's deed. During her aunt's life she pretended to be nothing else, and the form which she, or her lawyers, adhered to in calling her, in the Commissariot proceedings which followed on the strength of the deed, merely by the name she bore in the bond, is only

[1] *Supra*, p. 61, and Appendix, p. 77, where the entry in the Register is printed in full.

another illustration of a principle I have already expounded. It may have been that the Ruthven family lawyers were old-fashioned, or that they thought the Ruthven peerage was specially a case for such observance. But that they did have a rule in these cases which is capable of being generally stated begins to appear to be the fact. Isobel, on this occasion was styled 'Mrs. Isobel Ruthven.' If the designation is not explained by the practice of her lawyers just suggested, the only alternative is Mr. Round's—that it amounts to a desertion of the theory that the title survived the death of the male line; but that alternative is negatived by the insurmountable fact that in the very same document she asserts that her predecessor, Jean, had succeeded to the honour, by styling her Lady Ruthven.

'It would seem however,' he perseveres, 'that eventually she '[Isobel] herself adopted in her own will the same ambiguous 'style.'[1]

Again we are on one of Mr. Round's mistakes—again a testament dative—again an intestacy. His reference, within marks of quotation, is: '"Testament dative of Lady Isobel Ruthven, '"spouse to Colonel James Ruthven of Graitnay; she died '"in June last. Given up by James Ruthven of Ruthven, '"Esquire, her son as executor dative" (*Dunkeld*, vol. iii. fo. 420).'[2] But having found the place in the Register, I have to say that Isobel's name occurs four times in the record, and Jean's ten times, and that on no occasion is either of them called 'Lady Isobell' or 'Lady Jean' but always Isobell Lady Ruthven, and Jean Lady Ruthven.

What is the answer to that flat contradiction?

To put the reader in a position to judge of the facts, I print the whole entry in an Appendix, p. 78.

But what if it *had* been 'Lady Isobell'? Riddell, in his

[1] *Col. Gen.*, 169.

[2] *Col. Gen.*, *ut sup.*, 170 and n.

Remarks, which started this chace, repeatedly calls David Lord Ruthven 'Lord David'; and for the sake of full discussion I present Mr. Round with a real case of 'Lady Isobell.' In a decreet in vol. ii. p. 388 of the same Record of Testaments, Isobell Lady Ruthven is twice called Lady Ruthven, and once called Lady Isobell Ruthven. But what can he make of that?

The case against Isobel on her conduct has, in its turn, broken down at the touch.[1]

James Lord Ruthven.

James Ruthven succeeded his mother, and is the last object of special accusation. It will be observed that where, rightly or wrongly, he preserves his 'humble designation' of James Ruthven of Ruthven in his appointment as executor on his mother's estate,[2] and in his service as heir special to his grand uncle David,[3] he is but following a general custom of former members of his family. But as Mr. Round cites both these acts as evidence of the great thesis, never yet proved, that the members of the family in those times hesitated in their assumption of the title, it must be pointed out that if he had anything personally to do with the terms of them, both are evidence of his assertion of the survival of the title, for in both his mother is called Isobel Lady Ruthven.

As considerable ignorance of the character of the proceedings in a Service under the old system prevails in some quarters where the only information on the subject appears to be derived from

[1] The assumption of the title by Jean and Isobel was much more constant and unequivocal than that of Agnes the heiress of William Lord Herries. Cf. Lord Cranworth's Opinion. 3 Macq., 590, etc.

[2] Com. Rec., Dunkeld, 19 September, 1732, vol. ii., p. 420.

[3] Retours, Perth, 9 December, 1732. Recorded 21 Feb., 1733, No. 13.

some *ex parte* statements in certain peerage Claims, I may say that in Lord Ruthven's case the Inquest was held within the new Court House of the Court of Session, in Edinburgh, on 9 December, 1732. The jury of fifteen subscribing were: '(1) Sir James Fergusson of Kilkerran, advocate, chancellor; (2) 'Colonel William Douglas of Kirkness; (3) Mr. Lawrence Craigie 'of Kilgraston; (4) Mr. Henry Home, and (5) Mr. James 'Graham of Bucklyvie, advocates; (6) Mr. David Graham of 'Orkill; (7) Mr. John Hamilton and (8) Robert Fullerton, 'writers to the Signet; (9) Matthew Brown, one of the Under-'clerks of Session; (10) Alexander Menzies of Woodend; (11) 'Mr. Peter Ross of Innernethy; (12) John Nairn of Greenyards; '(13) Mr. Hugh Graham, writer in Edinburgh; (14) David 'Carmichael of Balmeddie, merchant in Edinburgh, and (15) 'Mr. Robert Malcolm, merchant there.' And the record of the Retour which they made narrates that they 'being sworn, say on 'their great oath, that the late David Lord Ruthven, grand-'uncle of James Ruthven of Ruthven, the bearer of these 'presents, son of Colonel James Ruthven or Johnston of Grat-'ney, and the late Isobel Lady Ruthven his spouse, who was 'the only daughter (*unica filia*) and child of the late Sir Francis 'Ruthven of Reidcastle and the late Dame Elizabeth Ruthven 'his wife, second sister german of the late David Lord Ruthven 'died last vest and seized, etc., etc.' Then follows the enumeration of the lands, etc., of which he is heir, and, in the course of it the jury repeatedly terms Jean 'Jean Lady Ruthven.' The attribution of the title to these ladies by such a jury is a matter of moment: a majority of its members were lawyers. Sir James Fergusson, its Chancellor, was within three years of being raised to the Bench (as Lord Kilkerran already mentioned as one of the judges, who, in 1740, reported the peerage of Ruthven among the peerages then subsisting.). Henry Home at a later date became

a judge as Lord Kames. No man of higher character and attainments than these ever graced the Scottish bench.[1] Lord Kames in addition was himself the author of a *Treatise on Scottish Peerages*. The jury included also several of the lairds of Stirlingshire and Perthshire, the Ruthven family's own country.

'It is not till late in the following year,' says Mr. Round, 'that 'we find him styling himself (in a private deed) "James Lord '"Ruthven."'[2]

The attitude of the critic is to be observed :—

1. He suggests that the deed, which is dated, 14 December 1733, and which is apparently the first he has found, is actually the first that James aired his pretensions in.

2. He again suggests that the deed comes after a significant interval of time.

3. He suggests that a grantor in a 'private' deed might call himself by a false title, the grantee (Mr. Hay) having apparently no interest to see that the person from whom he derives his right is rightly designated.

4. He suggests that if it hadn't been a private deed, the date of it might have been still later.

5. He suggests that if it had not been a private deed it would have been some evidence of *bona fide* assumption.

All these, save the last, I dismiss, as not requiring further attention ; and I present Mr. Round with evidence that James had already, before the date of this private deed, made the most public exhibition in his power of his pretensions. He had actually publicly exercised them, by voting as a peer at

[1] For memoirs of both of them see Tytler's *Life of Kames*.

[2] *Coll. Gen., ut sup.*, 170. The reference here is to *Riddell*, p. 141, where we find 'Translation by James Lord Ruthven to Thomas Hay, 14th December, '1733. *Mackerston Charter Chest*.'

the election of 21st September, 1733, the very first election which occurred after his succession.[1]

Mr. Round, however, had the facts before him at the moment at which he wrote his sentence about the private deed; for in the very next sentence he turns to the business of discounting the exercise that James made of his electoral privilege, and this is how he alludes to James's having already voted in public before he granted the private deed. 'He also 'now attempted, though very cautiously, to homologate his 'pseudo-title by voting at the election of Peers.'

The phrase is clearly misleading: he did not begin cautiously who took his first chance to the full. Mr. Round therefore explains in his next sentence that he means that James was cautious afterwards in the continuance, for out of thirty-three elections which took place in his time he voted at only eleven,[2] and at none of these was there (1) any counter-claimant for the right to vote as Lord Ruthven; or (2) a contested election in which his vote might have turned the scale.[3] There is no doubt that there was no counter-claimant; although collateral heirs male had survived lord David, none of them had ever claimed the title —that was the refutation of the 'Manuscript of Note.' But with regard to the second assertion, that Lord Ruthven never voted where his vote might have turned the scale, where is the proof of that?

The attempt to distinguish between his conduct in voting and that of the mass of the peers lacks the most ordinary requisite of success. For why Lord Ruthven voted so seldom, or how he cared and managed to vote so often we do not know till we know something of the circumstances of his life. But a perusal of the pages of Robertson's *Proceedings of the Peerage*

[1] Robertson's *Proceedings*, p. 135.
[2] *Coll. Gen.*, 170. [3] *Coll. Gen.*, 184.

reveals the fact that he voted seldomer than some peers and oftener than others. It reveals also another fact, that, whether personally, or by signed list, or by proxy entrusted to his fellow peers, he voted at several contested elections—*e.g.* 1747, 1774—when, so far as the printed record informs us, no one could have predicted whether there was to be an equality of votes or not; and we cannot now say that there was no occasion on which it may not have been thought that it might be to the advantage of some candidate or other to be able to eliminate Lord Ruthven's vote.

The counter-claimant and the closely contested election, says Mr. Round, were the only contingencies which a voter in an election of Peers in Scotland had to fear. The assertion is preposterous. There was no competition for the Earldoms of Wigton and Stirling, yet in Lord Ruthven's time the claimants to these titles were both ordered by the House of Lords to desist from styling themselves Peers till they had proved their right. There was no competition in 1766 or in 1767 for the right to vote as Earl of Caithness, nor was there any close contest, that we know of, impending, yet in both years the Lord Clerk Register challenged the right of James Sinclair the sole claimant to vote as the Earl. On the latter occasion Lord Ruthven was present and voting. There was neither competition nor contest in 1771 when the Duke of Buccleuch recorded his first protest against the vote of Lord Lindores. When Douglas pointed to the historical fact that the Ruthven vote had never been disputed, Riddell had no answer to make to the argument. He was probably too well versed in his Robertson's *Proceedings* to attempt the assertions on which Mr. Round has ventured, but rode off with the irrelevant remark that 'the legal insignificance of such 'circumstances must now be self-evident, after what has been 'premised, as to the exemption of Peerages from prescription.'

No one, so far as is known, ever pleaded that the fact that a Lord Ruthven had voted at Holyrood ennobled the race, or that prescription could arise from the exercise of the title. The answer has nothing to do with the question—how while so many votes were being disputed Lord Ruthven's never was. But Riddell could think of nothing better.

Mr. Round points out with truth that the exclusion of doubtful peers was not very strict when the claimant for the title of Lord Rutherford 'actually next on the list' to Lord Ruthven, was allowed to vote in 1733. But it must be recollected that in 1761 the House of Lords took order with these cases of Rutherfurd, Borthwick, Kircudbright, Stirling and Wigton, and that even in that time of setting all things right, not a whisper of any doubt about Lord Ruthven was ever heard.

The period during which Lord Ruthven thus put his right to the test by tendering his votes at the elections of Peers was one of peculiar stress to doubtful titles. In 1739, as we have seen, the Judges of the Court of Session were called upon to examine the Roll of Peers and to report. The Ruthven title was one of those most certainly marked out by circumstances for enquiry. So far as we know, no record of its patent of creation existed. Till September, 1733, a date within seven years of the Judges' Report no vote had been tendered in virtue of the peerage. So no Parliamentary opportunity of challenging it had occurred, and since that date Lord Ruthven had voted only thrice. A word of doubt from the Judges in their Report would have placed Lord Ruthven in the box with the claimants for the lordship of Rutherfurd and the other titles just named. It is impossible to suppose that Lord Ruthven did not know this. There is thus substantial proof here of the falsity of the charge of 'caution' preferred against this last object of the

attack; and the attack ends with him—James third Lord Ruthven.

Even though Mr. Round's diagnosis were correct, and Lord Ruthven's conduct in the method of his voting were indicative of his doubt of his right, the very fact of his conduct would land the theorist on the other horn of the dilemma; for the authorities of Lord Ruthven's own day, with their attentions already directed to these things, must have marked the indication, and been put to their enquiry. The private views of Jean, Isobel, Sir William, and James the third lord, are not nearly so important as the conclusions of the authorities of their times.

The theory of James Lord Ruthven's 'caution' which has thus gone to pieces was to have militated only against his individual *bona fides*. But now that the theory is seen to be unsupported, his exercise of his privilege without challenge becomes an addition to the evidence that in times when the nature of the limitation of the peerage must be presumed to have been known, his title was held to be good.

There is an additional fact of this James Lord Ruthven's case, which has to be marshalled in its place here although it has been alluded to already. It is that in his time occurred the Cassillis case. By the decision in that case, in 1762, any presumption in favour of the Lords Ruthven as heirs female and of line that may have existed in 1740 was reversed by the introduction of the presumption that patents whose terms were not known are limited to heirs male of the body of the grantee. Lord Ruthven might then have been put, like Lord Lindores, to a proof of his patent; but the fact is that even then his tenure of the peerage of Ruthven was not disputed.

I have already said in my preliminary statement of facts that this Lord Ruthven and his lady were summoned with the other Scottish peers to the coronation of King George III., in 1761;

and he and his descendants and representatives, to the present day, appear to have been uniformly treated at Holyrood and at Court as peers of the realm.

My task is performed, and no lengthy summation is needed. I have examined the supposed demonstration that this peerage of Ruthven of Freeland is extinct; and I have found that the assertions on which that demonstration depends are destitute of authority, that internally its parts contradict each other, and that from without it is confuted. I have tested every link in the long chain of pretended facts, which, taken together, were to prove that the heirs of the family after the extinction of the male line knew that the peerage did not descend to them, and that their assumption of it was fraudulent; and every link has broken in the handling.

It has not been any part of my undertaking to show what the terms of the unknown patent were; but I have shewn that for two centuries the actual descent of the peerage has, for aught yet seen, been identical throughout with that of the entailed estates of the family. I have shewn also that, with the exception of the first heir of entail, Jean, the heirs who assumed the peerage after the extinction of the heirs male, were the patentee's heirs of line, who have also held the title to within a score of two hundred years; and I think I have also shewn that, throughout the whole period during which the provisions of the patent were presumably known, the subsistence of the title was admitted by every authority who had a duty, and, so far as I can find, by every personage who had an interest to deny it if it had been deniable.

Whoever would, at this date, deny the subsistence of the peerage must meet the presumption in its favour which an acquiescence so long and so uniform has established.

APPENDIX.

COMMISSARIOT OF DUNKELD. TESTAMENTS.

(Vol. 3, page 75.)

Jean, Lady Ruthven, 1726.

The Testament Dative and Inventar of the sums of Money & debts resting and perteining to the deceast Jean Lady Ruthven the time of hir deceass which was in the moneth of—— j^{m} vij^{c} & tuenty—— years truely made & given up by Mrs. Isobell Ruthven spouse to Collonell James Ruthven alias Johnstone of Graitney and him for his interest and James and Anna Ruthvens laufull children procreat betuixt them and Mr. Henry Rollo spouse to the said Anna Ruthven for his interest Co.-Executors Dative as nearest of kin decerned to the said defunct by the Commissar of Dunkeld upon the day & date of thir presents In corroboration of a generall clause contained in ane assignation granted by the said defunct to them of the date the twenty sevinth day of Aprile j^{m} vij^{c} & tuenty one years & registrat in the Shirriff Court books of Perth upon the sevinth day of August 1722 years whereby she assigns to the said Mrs. Isobell Ruthven in liferent and the said James and Anna Ruthvens in fie all principall sumes that should be resting to hir att her death with the annualrents thairof from the time of hir deceass as the decreet dative following on ane edict duely execute and indorsed in itself more fully bears.

Imprimis There is givin up resting to the said defunct the time forsaid of her deceass the sume of six hundered and fourty five pound three shillings four pennies scots money of principall with the annualrent thereof from the term of Candlemass j^{m} vij^{c} & tuenty two contained in a bond of corroboration granted to the said defunct by Sir

George Sinclair of Kinnaird of the date the sixth day of July j^m vij^c & thirteen years

Summa Inventarii patet

This Testament was confirmed att Dunkeld the tuentyth day of October j^m vij^c & tuenty six years Mr. John Gairner minister of the Gospell att Moneydy became Cautioner acted for the Executors.

COMMISSARIOT OF DUNKELD. TESTAMENTS.

(Vol. 3, page 420.)

Isabell Lady Ruthven.

The Testament Dative and Inventary of the goods gear soumes of money and debtis which pertained and were resting to umquhill Isobell Lady Ruthven spouse to Collonell James Ruthven of Graitney the time of her deceass which was in the moneth of June last by past faithfully made and given up by James Ruthven of Ruthven Esquire her son Executor dative qua nearest in kin decerned to the said defunct by the Commissar of Dunkeld upon the nineteenth day of September in this current year j^m vij^c & thirty two as the Decreet Dative following on an edict duely execute and indorsed in itself more fully bears

Imprimis There is given up pertaining and belonging to the said defunct time forsaid of her deceass the particular goods and gear under written valued and estimate as follows viz^t. Imprimis In the defuncts own room two easie chairs estimate att three pound each Inde six pound Item eight small chairs att two pound eight shilling each Inde nineteen pound four shilling Item a chist of drawers att twelve pound twelve shilling Item a tall clock att ninetie six pound Item the timber of a bed att four pound Item the curtains pands and roof of the bed att twentie pound Item the feather bed bolster and pillows att sixteen pound Item four pair blankets att seventeen pound two shilling Item two glass branches att one pound sixteen shilling Item a chimney pocker and tongues att twelve shilling Item a tea table six china cups guilded with saucers four tea silver spoons and four silver guilt two stone teapots and two milk pots all valued

att twentie one pound Item the window curtains att twelve shilling Item in the defuncts closet Imprimis a little cabinet att three pound Item a scrutore att twenty one pound Item in the high little dineing room Imprimis a chist of drawers att fifteen pound Item a fir press with drawers under it att twelve pounds Item three old timber chairs and ane old armed one att one pound four shilling Item ane old box bed att one pound sixteen shilling Item the pictures att fourty eight pound Item in the bed room off the dineing room the timber of the bed att three pound Item a feather bed bolster and two pillows att sixteen pound Item a down bed att twentie four pound Item five pair blankets att nine pound Item curtains pannells and roof att fifteen pound Item the pictures att[1] Item a chist of drawers att fifteen pound Item a little ternished walnute table with two leaves att three pound Item a small sconce glass with branches att nineteen pound four shilling Item a chimney of iron pocker shovell and tongs att four pound sixteen shilling Item in the jamhead room the timber of the bed att four pound Item the curtains paunds and roof att twelve pound Item the feather bed bolster and two pillows at seven pound four shilling Item the down bed att fifty pound eight shilling Item three pair blankets att nine pound Item ane old chist of winescott drawers att three pound twelve shilling Item an old iron grate att six shillings Item in the laigh jam the timber of the bed att four pound sixteen shilling Item the feather bed bolster and pillows att ten pound sixteen shilling Item three pair of blankets att three pound fourteen shilling Item the curtains and pannells att twelve pound Item three pieces of arras hangings att eighteen pound Item a piece of brown stuff hangings att two pound fourteen shillings Item two chairs and ane armed Ditto att three pound six shilling Item ane Japand tea table att twelve shilling Item ane iron chimney shovell pocker and tongs att three pound twelve shilling Item in the laigh drawing room two chairs att eighteen shilling per piece Inde four pound ten shilling Item a table att four pound sixteen shilling Item a chimney pocker shovell and tongs att twelve pound Item in the laigh dineing room two peices of large arras hangings att eighteen pound Item in the blew room the timber

[1] Blank in Record.

of the bed and[1] Ditto att seven pound four shilling Item the curtains pannels and roof att eighteen pound Item the feather bed bolster and pillows att twelve pound Item three pair and ane half blankets att eight pound eight shilling Item ane old chist of drawers att two pound eight shilling Item two old smoothing tables att twelve shilling Item three old chairs att one pound Item the picture of Sir Willliam Cunninghame att large att eighteen pound Item in the kitchen the big iron chimney with gallowses and two crooks att thirty pound Item two pott bowls and two spites att one pound sixteen shilling Item a big pott and two lesser ones with a little kettle pott att nineteen pound four shilling Item a goblet pan two sauce pans a frying pan and dreeping pan att six pound Item a flammer a brass scummer a coppar ladle and a flesh fork att twelve shilling Item a bigg coppar kettle att sixteen pound sixteen shilling Item a stone marrable mortar att two pound eight shilling Item two brass morters with two pistells att four pound four shilling Item a crib two tables and two salt backets att six pound Item a fire pan two branders a girdle a big toster and ane egg toster att two pound eight shilling Item two tea kettles one coppar and the other brass att three pound Item a winter two coall backets a lamp and a cruisie att one pound Item ane old feather chist att six shilling Item a feather bed bolster with four pair blankets att four pound ten shilling Item in the pantry six silver spoons two silver salts and a divideing spoon att thirty seven pound four shilling Item thirty seven pair of linnen sheets a top Ditto one pair Dutch Holland Ditto att one hundered and fourty four pound Item thirteen pair course sheets and two pair twilled Ditto att twentie four pound Item four dozen Damask naprie Item three Damask table cloaths Item eighteen dozen Dornick naprie Item two dozen course naprie Item two coarse table cloaths all valued att one hundered and twentie pound Item fourty seven elns new linnen att thirty three pound eighteen shilling Item twenty four elns Dornick att nineteen pound eight shilling Item thirty elns new linnen att fourty pound four shilling Item thirty six elns Dornick att twentie two pound sixteen shilling Item twelve elns Holland att Fourteen pound sixteen shilling Item eight dozen peuther

[1] Blank in Record.

trunchers Item sixteen dishes Item seven ashets all estimat to sixty pound Scots Item three flagons att three pound twelve shilling Item one coppar tanker att eighteen shilling Item three chopin stoups att two pound two shilling Item six basons and six chamberpots att fourteen pound eight shilling Item one bed pan and ane Delph chamberpott att two pound eight shilling Item one mutchine peuther stoup three pair brass candlesticks att seven pound sixteen shilling Item eight knives and forks att three pound Item eight delph trunchers and three Dishes att three pound Item a coffie patt puding pan and a grater att two [pound ?] two shilling Item a chaise and chaise horse with a street chair att fourty eight pound Item in the brewhouse a masking fatt att seven pound four shilling Item two wort stands att three pound Item Two nine galland trees att three pound twelve shilling Item five small barrells att two pound eight shilling Item two wort tubs and a broad head att three pound twelve shilling Item twenty bolls bear with the fodder estimate att four pound sixteen shilling per boll Inde ninetie six pound Item thirty bolls oats with the fodder estimate att five pound per boll Inde one hundered and fifty pound Item one boll pease with the fodder estimate att four pound four shilling

Summa Inventarii

Follows debts resting to the defunct

Imprimis by William Dron in Westhall twentie four pound four shilling Item by James Ellice in Forgan five pound Item by Isobell Moncrief there fourteen pound Item by Charles Malcom there six pound three shilling Item by John Neilson there nineteen shilling eight pennies Item by David Deor in Eastfield seventeen pound nine shilling and two pennies Item by William Donaldson there thirteen pound Item by John Donaldson in Drumbuils two pound ten shilling Item by James Low there three pound ten shilling Item by Thomas Fisher in Vaultmiln seven pound two shilling six pennies Item by Elizabeth Fergusson in Eastfield sixteen pound one shilling and four pennies Item by William Smith in Housebeg five pound six shilling and eight pennies All which particular soumes and debts abovewritten are resting by the forenamed persons to the said defunct as arrears of their rents for cropt j^{m} vij^{c} & thirty one and preceedings Item the soume of one hundered and

seventy pound sixteen shilling and eight pennies as ten years and ane quarters annualrent from Candlemass j^m vij^c & twentie two to Whitsunday j^m vij^c & thirty two of the principall soume of five hundered merks contained in ane Bond granted by the said Collonell James Ruthven alias Johnston to the deceast Jean Lady Ruthven dated the fifteenth day of November j^m vij^c & four and assigned by her the said Jean Lady Ruthven to the said defunct in liferent and to the said Executor and Anna Ruthven his sister in fee conform to her assignation dated the——day of——j^m vij^c &——years Item the soume of three hundered and fourty one pound thirteen shilling and four pennies money foresaid as ten years and ane quarters annualrent from the said term of Candlemass j^m vij^c & twentie two to the said term of Whitsunday j^m vij^c & thirty two of the principall soume of one thousand merks money foresaid contained in ane other Bond granted by the said Collonell James Ruthven to the said Jean Lady Ruthven dated the seventh day of December j^m vij^c &—— years and assigned by her the said Jean Lady Ruthven to the said defunct in liferent and to the said Executor and Anna Ruthven in fie conform to her assignation thereof in their favours dated the—— day of——j^m vij^c &——years Item the soume of Two hundered and eight pound six shilling and eight pennies money foresaid as six years and ane quarters annualrent from Candlemass j^m vij^c & twentie sex to Whitsunday j^m vij^c & thirty two of the principall soume of one thousand merks scots contained in a Bond dated the ninth day of November j^m vij^c & five years granted by Patrick Seton of Lathrish and Mr. John Ross younger of Innerneathy to the said Jean Lady Ruthven and assigned by her to the said defunct in liferent and the said Executor and Anna Ruthven in fie conform to her assignation in their favours dated the——day of——j^m vij^c & ——years Item the soume of one hundered and two pounds ten shillings scots as ten years and ane quarters annualrent from Candlemass j^m vij^c & twenty two to Whitsunday j^m vij^c & thirty two of the principall soume of three hundered merks scots contained in ane Bond dated the twentie first day of May j^m vij^c & six years granted by Laurence Craigie of Killgrastown to the said Jean Lady Ruthven and assigned by her to the said

defunct in liferent and to the said Executor and Anna Ruthven in fie conform to her assignation in their favours dated the——day of ——j^m vij^c &——years Item the soume of eighty pound seventeen shilling and six pennies scots as ten years and ane quarters annualrent from the said term of Candlemass j^m vij^c & twentie two to Whitsunday j^m vij^c & thirty two of the principall soume of one hundered and fifty pound eight shilling scots contained in ane Bond dated the ninth day of July j^m vij^c & nine years granted by Michael Ballfour of Forrest to the said Jean Lady Ruthven and assigned by her to the said umquhill Isobell Lady Ruthven in liferent and the said Executor and Anna Ruthven in fie conform to her assignation in their favours dated the——day of——j^m vij^c &——years Item the soume of three hundered and seventy five pound money foresaid as three years and three quarters annualrent from Lambass j^m vij^c & twentie eight to Whitsunday j^m vij^c & thirty two of the principall soume of three thousand merks contained in a Bond dated the——day of—— j^m vij^c & twentie two granted by David Campbell elder and David Campbell younger of Keithick in favours of the said defunct in liferent and the said Executor and Anna Ruthven in fie. Item the soume of seven hundered and seven pound fourteen shilling and eight pennies as the annualrents from the twentie seventh day of November j^m vij^c & twentie six to Whitsunday j^m vij^c & thirty two of the principall soume of two thousand six hundered and fourty five pound three shilling eight pennies scots contained in a Bond granted to the said defunct in liferent and the said Executor and Anna Ruthvens fie by——Lowis of Merchiston——of Blair and——of Letham dated the twentie seventh day of November j^m vij^c & twentie six. Item seven year and ane quarters annualrent from the term of Candlemass j^m vij^c & twentie five to the term of Whitsunday j^m vij^c & thirty two of the principall soume of one thousand merks scots contained in a Bond granted by John Masterton merchant in Edinburgh and Hary Masterton Drugest there to the said Jean Lady Ruthven dated the tenth day of Aprile j^m vij^c & nineteen and assigned by her the said Jean Lady Ruthven to the said defunct in liferent and the saids Executor and Anna Ruthven in fie conform to her assignation in their favours dated the——day of——j^m vij^c &——years But deducing

from the said annualrents the soume of ten pound sterling payd thereof by John Malcolm writer in Edinburgh to Mr. George Richardsone wryter there Inde remains resting of the said annualrents at Whitsunday last j^{m} vij^{c} & thirty two the soume of one hundered and twentie one pound thirteen shilling and four pennies money foresaid Item ten years and ane quarters annualrent from the term of Candlemass j^{m} vij^{c} & twentie two to the term of Whitsunday j^{m} vij^{c} & thirty two of the principall soume of one hundered pound sterling contained in ane Bond granted by Sir William Cunningham of Cunninghamhead and the said Collonell James Ruthven to Dame Helen Ogilvy relict of Sir Robert Lauder in liferent and their son in fie dated——and in ane assignation thereof by them to the said Jean Lady Ruthven dated the twenty ninth day of December j^{m} vij^{c} & twentie one and to the annualrent of which the said umquhill Isobell Lady Ruthven had right Inde six hundered and fifteen pound money foresaid

Summa saids debts

Summa Inventar and debts—

This Testament was confirmed att Dunkeld the nineteenth of September j^{m} vij^{c} & thirty two but extracted the twelveth day of December j^{m} vij^{c} & thirty two years Mr. Henry Rollo lawfull son to the Right Honourable Lord Rollo became cautioner acted for the Executor and he bound for his releef.

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